

# UMHLATHUZE MUNICIPALITY

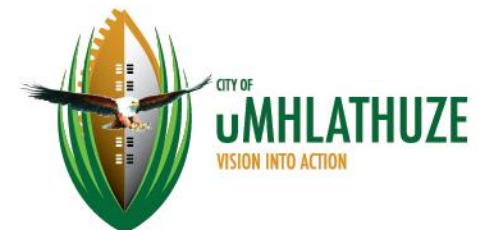
*Presentation to IERM Conference*  
*On*  
**LEGISLATION GOVERNING CEMETERIES AND CREMATORIA**

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- Legal Framework Regulating Cemeteries and Crematoria
  - ✓ Constitution of the Republic of South Africa (1996)
  - ✓ National Environmental Management Act, NEMA (1998)
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  - ✓ R 363 OF 2013: Regulations relating to the management of human remains
  - ✓ Kwa-Zulu Natal Cemeteries and Crematoria Act (1996)
  - ✓ Births and Deaths Registration Act (1992)
  - ✓ uMhlathuze Municipal By-laws
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- Future provisions/trends vs legislation



# Synopsis of uMhlathuze Municipality

- Name derived from the Umhlathuze River - meanders through the municipal area and symbolically unifies the towns , suburbs and traditional areas.
- Located on the North – East Coast of Province of KZN.
- Falls within King Cetshwayo District Municipality.
- Its covers 795 km2 and incorporates Richards Bay and Empangeni.
- Third largest municipality in KwaZulu-Natal: one of the fast growing municipalities
- Six (6) cemeteries (5 municipal and 1 district)
- All cemeteries are established, managed in line with legislative and policy prescripts.



# LEGAL FRAMEWORK.

- Constitution of the Republic of South Africa, 1996. (Act 108 of 1996)
  - ✓ Status of Municipalities
  - ✓ Constitutional Mandate
  - ✓ Bill of Rights
- National Environmental Management Act 1998, (Act 107 of 1998)
- National Health Act, 2003. (Act 61 of 2003)
  - ✓ Regulation 363 of 2013: Regulations relating to the management of human remains
- KwaZulu-Natal Cemeteries and Crematoria Act, 1996 (Act 12 of 1996)
- Births, Marriages and Deaths Registration Act, 1963 (Act 81 of 1963)
- uMhlathuze Municipal : Cemetery By-laws

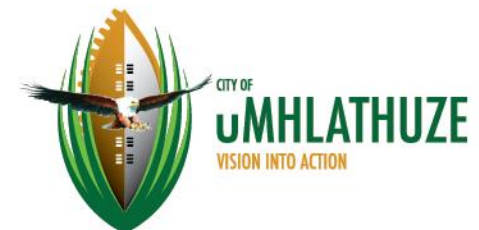


# LEGAL FRAMEWORK.

## Constitution of RSA:

### Section 151. Status of Municipalities

- (2) The executive and the legislative authority of a municipality is vested in its Municipal Council.
- (3) A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject of national and provincial legislation, as provided for in the Constitution.
- (4) The national or a provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions.



# LEGAL FRAMEWORK.

## Constitution of RSA:

### Section 155 and 156. Constitutional Mandate

- Management and the administration of cemeteries are functions of local government. Provincial administrations have only a monitoring and support role with respect to such functions
- Part B of Schedule 5 of the Constitution of South Africa, 1996 , a municipality has a the legislative duty and obligation to manage and control cemeteries.
- As the third sphere of government, a municipality has a duty and obligation to govern, on its initiative, the local government affairs of its community subject to national and provincial legislation.



# Legal Framework

## Constitution of RSA

### Section 24 – Bill of Rights

As contained in Chapter 2 of the Constitution, Bill of Rights is a cornerstone of democracy in our country. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.

This is very important statement leads us to unpacking of human rights contained in the Bill of Rights in relation to environment.

- Everyone has a right –
  - A) to an environment that is not harmful to their health or well-being
  - B) to have the environment protected , for the benefit of present and future generations, through reasonable legislative and other measures that-
    - I. Prevent pollution and ecological degradation
    - II. Promote conservation, and
    - III. Secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.



# Legal Framework

## Bill of Rights cont.

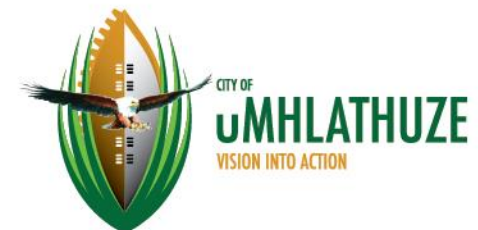
- **Section 31 – Cultural, Religious, and Linguistic Communities**
- (1) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community
  - (a) to enjoy their culture, practice their religion and the use of their language.
  - (b) to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.
- (2) The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.





# National Environmental Management Act ,NEMA(1998)

- The prime principle of the National Environmental Management Act (NEMA) upon the establishment of cemeteries is in the area of pollution control.
- GNR.544 of 18 June 2010: Listing Notice 1: List of activities and competent authorities identified in terms of section 24(2) and 24 D.
- 3. Identified activities and competent authorities:
- 3.(1) The activities listed in Appendix 1 are identified in terms of section 24(2) (a) of the Act as activities that may not commence without an environmental authorization from the competent authority.
- 3.(2) The investigation, assessment and communication of potential impact of activities must follow the procedure as prescribed in regulation 21 to 25 of the Environmental Impact Assessment Regulation published in terms in terms of Section 24(5) of the Act.
- i.e ITEM 21.The establishment of cemeteries of 2500 square meters or more in size.



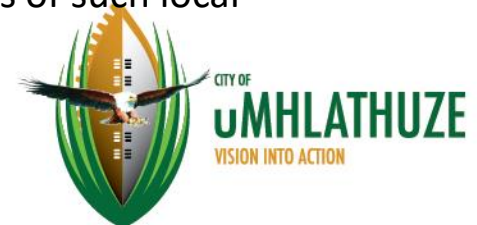
# R363 Regulations relating to the management of human remains

- **Chapter 5. Burials sites and burials.-**
- Section 15 (1) No land or site shall be identified and used for the purpose of a burial site, unless environmental authorization has been granted in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA), Environmental Impact Assessment Regulations, R. 543 of 18 June 2010, as amended (EIA Regulations).
- In the case of private burials sites, a land survey has to be conducted by a local government and necessary approval granted, such approval must be in writing and should contain such conditions for use as the availability of waste management and ablution facilities which shall include access to potable water and sanitation facilities.



# R363 Regulations (contin....)

- 2) All burial sites must comply with the following environmental requirement-
  - a) Be located outside the 100 year floodplain
  - b) Be located at least 350m from the ground water sources used for drinking purposes and at least 500m from the nearest habitable building.
  - c) For a preferred burial site with a soil of sand-clay mix of low porosity and a small and fine-grain texture, the water table should be at least 2.5m deep in order to allow for traditional grave depth of six feet(1.8 meters)
  - d) For areas with higher water tables, local government may determine a reasonable depth with additional walling recommendation to protect underground water.
  - e) The covering soil shall not be less that 1 m, should two bodies be buried in the same grave, 300mm of soil shall be maintained between the coffins.
- (3) All burials must be registered with the relevant local government, and the local government concerned shall enter all burials in the register of burials of such local government.



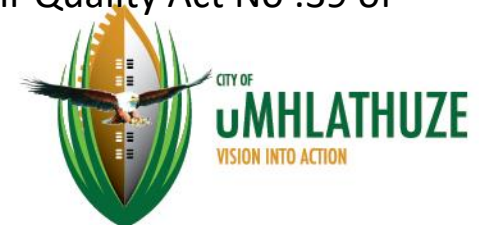
# R363 Cremations

- **Chapter 6, Section 16. Disposal of human remains by cremation.-**
  - 1) Human remains shall only be cremated in an authorized crematorium.
  - 2) A crematorium shall be authorized in terms of NEMA AND EIA Regulations with regards to environmental authorization.
- Furthermore a crematorium shall be issued with an Air Emission License



# R363 Cremations (contin....)

- **Section 18. Minimum requirements for a cremation facility.-**
- (1) A cremation facility must comply to the following-
  - a) the site must be located at least 500m from any habitable dwelling;
  - b) the chimney must have a height of not less than 3 meters above the roof;
  - c) no cremation shall take place until the minimum combustion temperatures of the urn has been reached;
  - d) the premises shall be kept in a clean , sanitary and in good repair;
  - e) the facility shall be adequately ventilated and illuminated;
  - f) the facility shall be operated and managed in such a manner as to prevent the dispersion of ash into the atmosphere ; and
  - g) emissions levels shall conform to the ambient air quality or emission standards as determined in terms of the National Environmental Management :Air Quality Act No .39 of 2004



# R363 Cremations (contin...)

- **Section 17. Issuance of a cremation permit.**
- All cremations shall be permitted by the relevant local government.
- (2) A local government may not issue a cremation permit; unless the application is accompanied by a declaration by the medical officer who declared the deceased dead,(and if applicable , who also performed post mortem examination of the deceased) whom cremation is intended, indicating causes of death whether is natural or from any dreadful communicable disease, and that the remains of the deceased may be disposed.



# Kwa-Zulu Natal Cemeteries and Crematoria Act (1996)

- Provides laws and regulations for the establishment of cemeteries.
- Procedures for burials and cremations
- Exhumations
- Extensive and provides an adequate legal frame work for burials and cremations where by-laws do not exist.



# Births and Deaths Registration Act

- Provides a legal obligation on the operator of a cemetery or crematorium to record all burials and cremations.
- Provides the mandate to the DG to nominate proxies to issue burial orders for the burial of corpses





# Municipal By-Laws

- Operating Hours.
- Tenure of graves
- Nuisance Laws
- Materials to be used
- Maintenance
- Tariff
- Penalties



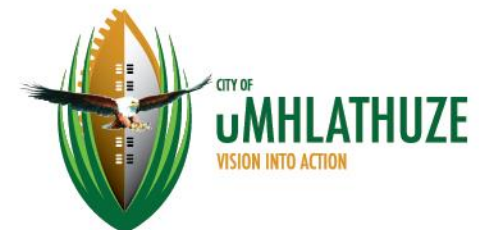
# CHALLENGES

- Implementation and Monitoring of legislation
- Cultural and religious dynamics
- Scarcity of suitable land and ownership
- Funding for :
  - ✓ Research
  - ✓ Specialised functions i.e. Geohydrological and Geotechnical assessment.
  - ✓ Establishment of cemetery facilities



# FUTURE PROVISIONS/TRENDS VS LEGISLATION

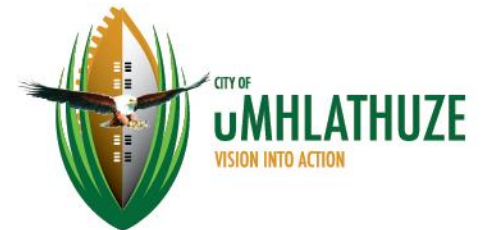
- **BURIAL SPACE LIMITATIONS**
  - LAND SHORTAGES (DEVELOPMENT VS BURIALS)
  - EXISTING CEMETERIES - STERILE LAND – LIMITED USAGE
- **ALTERNATIVES**
  - **MORE INTENSIVE USES**
    - GRAVES RE-USED FOR FAMILY BURIALS
    - RENEWABLE TENURE OF GRAVE SITES
    - RE-ALLOCATION OF UNUSED SITES
- **INCLUSION IN LAND USE PLANNING FRAMEWORK PLANS**
- **ADOPTION OF ALTERNATIVE PRACTICES**
  - MULTIFUNCTIONAL USAGES e.g PUBLIC PARKS, SPORTSFIELDS
  - CREMATION
  - MAUSOLEUMS
  - RECYCLING OF GRAVES
  - PROMENSION – FROZEN
  - RESOMATION – ALKALINE HYDROLYSIS (MELTING)
- **LEGISLATIVE PROCESSES AND PROCEDURES**
- **PUBLIC PARTICIPATION AND ORIENTATION PROCESSES**



# FUTURE: WILL THIS STILL BE THE PLACE?



# OR THIS?



**THANK YOU/  
DANKIE  
SIYABONGA**

