

MODEL CEMETERY AND CREMATORIA BY-LAWS

(ADOPTED BY RESOLUTION OF THE MUNICIPAL COUNCIL OF ...)

The Municipality of (“the municipality”) hereby publishes the Cemetery and Crematoria By-Laws set out below. They have been promulgated by the municipality in terms of section 156(2) of the Constitution of the Republic of South Africa, 1996 and in accordance with section 13(a) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000).

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CHAPTER 1: INTERPRETATION

1. Definitions

For the purpose of these by-laws, any word or expressions to which a meaning has been assigned in the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) shall bear the same meaning in these by-laws, and unless the context indicates otherwise—

“active cemetery” means a public cemetery situated within the area of jurisdiction of the municipality, and includes the buildings and fixtures within that cemetery;

“adult” (where the word is used to describe a body) means any deceased person over the age of 12 years;

“aesthetic section” or **“lawn section”** means a section of a cemetery, set aside by the municipality, in which a headstone only may be erected on a berm and on which the municipality must provide and maintain a strip of lawn;

“ashes” means the remains of a cremated human body;

“berm” means a concrete strip laid by the municipality in the aesthetic section beside a row of graves or between two rows of graves;

“body” means any dead human body and includes the body of a still-born child;

“burial order” means an order issued by a person authorised to do so in terms of the Births and Deaths Registration Act, 1992 (Act 51 of 1992);

“burial place” means any burial-ground whether public or private, or any place whatsoever in which one or more bodies is or are buried, interred, cremated or otherwise disposed of, or where it is intended to bury, inter, cremate, or otherwise disposed of a body;

“cemetery” means any piece of land for the burial or interment of a body and, except for Chapter 3 of these by-laws, refers only to public cemeteries;

“cemetery services” means services relating to the management, administration, operation and maintenance of an active cemetery;

“child” means any deceased person of the age of 12 years or under whose coffin will fit into a grave opening prescribed for children in section 27 of these by-laws;

“commonwealth war burial” means a commonwealth war burial as defined in section 1 of the Commonwealth War Graves Act, 1992 (Act 8 of 1992);

“commonwealth war grave” means a commonwealth war grave as defined in section 1 of the Commonwealth War Graves Act, 1992 (Act 8 of 1992);

“cremation” means the practice of disposing of a human body or any remaining part of a human body by burning it and reducing it to ashes;

“cremated remains” means all recoverable human remains after the cremation;

“crematorium” means any building fitted with appliances for cremation, including everything

essential, incidental or ancillary thereto, and, includes buildings in which the ceremony is conducted and the cremation carried out and any structure which in any special circumstance the MEC for health may approve as a crematorium;

“**user**” means a person who has paid or caused any of the charges determined from time to time by the municipality to be paid or who has obtained the right to have any memorial work erected or constructed or who has obtained any other rights referred to or mentioned in these by-laws;

“**exhumation**” means the removal of a human body from its place of interment;

“**full capacity**” means that all existing space for interment has been used so that it is no longer reasonably practicable, whether for economic, aesthetic, physical or any other good reason for the municipality to set out any more sites for graves;

“**garden of remembrance**” means a section of a cemetery or crematorium set aside for the erection of memorial work to commemorate a deceased person whose body has been cremated;

“**grave**” means any piece of land that has been used or laid out for the interment of one or more bodies within any cemetery;

“**grave of a victim of conflict**” means grave of a victim of conflict as defined in section 2 of the National Heritage Resources Act, 1999 (Act 25 of 1999);

“**Health Act**” means the Health Act, 1977 (Act 63 of 1977);

“**indigent person**” means a person who makes use of the cemetery service and who is called an indigent person either in these by-law or in any other law or;

“**inhumation**” means the action or practice of burying human remains or the fact or condition of being buried;

“**interment**” means burial in the ground or in any form of tomb or burial place and includes the cremation of a body and interred shall have a corresponding meaning;

“**medical officer of health**” means the medical officer of health of the municipality appointed in terms of section 22 of the Health Act, or any person appointed to assist him or her in terms of section 24 of the Health Act, who is authorised by the medical officer of health and who acts under his or her supervision;

“**memorial wall**” means a wall containing a niche or niches for placing of ashes or inscribed plaques or both in a garden of remembrance;

“**memorial work**” means any tombstone, railing, fence, monument, memorial, inscription or other work erected or which may be erected on or about any grave;

“**monumental section**” means a section of a cemetery, which has been set aside by the municipality wherein memorial work may be erected to cover an entire grave area;

“**municipal manager**” means the municipal manager as defined in section 82(1)(a) of the Structures Act;

“**municipality**” includes, subject to the provisions of any other law, the municipal manager, but only if his inclusion is impliedly required or permitted by these by-laws and only in respect of the

performance of any function, or the exercise of any duty, obligation or right in terms of these by-laws or any other law;

“**new cemetery**” means a public cemetery which is developed, or set aside for development, by the municipality and which is or may become an active cemetery as contemplated in section 2(1) of these by-laws;

“**niche**” means a recess or hollow in a memorial wall for the placing of ashes;

“**passive cemetery**” means a public cemetery owned, regulated, established, maintained, or controlled by the municipality, that is certified as a “passive cemetery” in terms of section 5(1) of these by-laws;

“**pauper**” means a dead person whose identity is unknown to the municipality despite all reasonable steps to identify him or her;

“**private cemetery**” means any cemetery which is not a public cemetery;

“**private grave**” means any piece of ground that has been laid out for a grave within any cemetery and in respect of which an exclusive right of use has been purchased in terms of section 23 of these by-laws;

“**public cemetery**” means any cemetery which is owned, regulated, established or maintained by, or the control of which is legally vested in, the municipality;

“**registered description**” means the description of the land as set out in the title deed registered at the deeds office in terms of the Deeds Registry Act, 1937 (Act 47 of 1937);

“**registrar of deaths**” means a person duly appointed to register deaths in terms of the Births and Deaths Registration Act, 1992 (Act 51 of 1992);

“**resident**” means a person who, at the time of death, ordinarily resides in the boundaries of the municipality;

“**SANS**” means the South African National Standards Codes of Practice or the South African Bureau of Standards Codes of Practice as contemplated in Government Notice No. 1373 published in Government Gazette 24002, dated 8 November 2002 in terms of the Standards Act, 1993 (Act 29 of 1993);

“**service area**” means the area of jurisdiction of the municipality;

“**service delivery agreement**” means an agreement between the municipality and a service provider in terms of which the service provider is required to provide cemetery services;

“**service provider**” means any person who has entered into a service delivery agreement with the municipality in terms of section 81(2) of the Systems Act;

“**still-born child**” means a human foetus that has had at least 26 weeks of intra-uterine existence but who was born dead in the sense of showing no sign of life after a complete birth;

“**Structures Act**” means the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

“**supervisor**” means a person appointed from time to time by the municipality to supervise any cemetery in accordance with section 3(1) of these by-laws;

“**Systems Act**” means the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);

“**tariff**” means the charge to users for rendering cemetery services, determined and promulgated by the municipality, or adjusted by a service provider, in terms of Tariff Policy by-laws adopted under section 75 of the Systems Act; and

“**undertaker**” means a person registered to undertake the preparation of a human body for burial or cremation in terms of the Health Act.

CHAPTER 2: ESTABLISHMENT OF PUBLIC CEMETERIES

2. Establishment of Cemeteries

(1) The municipality may from time to time set aside, acquire or develop any ground for the purpose of establishing a cemetery.

(2) The municipality may allocate and set apart portions of the cemetery for different religious denominations.

(3) The municipality must at all times ensure that sufficient burial space is available for the burial of bodies within the service area.

(4) The municipality is responsible for the maintenance of all cemeteries and for repairing damage to the cemetery other than the maintenance and repair of memorial work.

(5) The cemetery services may be suspended by the municipality for maintenance or repair but only after reasonable notice has been given by it of its intention to do so in a newspaper, published in an official language, circulating in the municipality and specifying that an objection to the suspension may be made in writing to the municipal manager within 30 days of the publication of the notice in the newspaper. Suspension may not be made unless there is another active cemetery in the same category that is available to the public in the service area as an adequate temporary substitute.

3. Supervisors

(1) The municipality or service provider must appoint a supervisor to every cemetery to control the day-to-day management of the cemetery.

(2) The supervisor may supervise more than one cemetery.

4. Classification of Cemeteries

(1) The municipality or service provider may classify active cemeteries into different categories for the purposes of establishing different levels of service.

(2) The classification must be undertaken in such a manner that the cemeteries are

classified for the purposes of price differentiation in order to ensure affordability but must not amount to unfair discrimination.

5. Passive Cemeteries

(1) Once a cemetery is full and can no longer be used as an active cemetery, the municipality must issue a certificate declaring that cemetery to be a passive cemetery.

(2) The municipality or service provider may close any section of the cemetery on the grounds of it being full and, if either the municipality or service provider does so, it may continue to use the rest of the cemetery as an active one until the whole cemetery is full and, when that happens, it must be declared a passive cemetery in accordance with subsection (1).

(3) The municipality is responsible for the maintenance of all passive cemeteries.

CHAPTER 3: PRIVATE CEMETERIES

6. Registration of Existing Graves

Any owner, other than the municipality, of land in which any grave exist, must, if he is aware of its existence, inform the municipality about it on a form prescribed by the municipality.

7. Establishment and Continued Use of Private Cemeteries

No person shall establish a private cemetery within the service area, and no owner of any private cemetery already in existence shall, if the use of such cemetery was not authorised previously by the municipality, continue to use it for burial purposes without the municipality's authority having been obtained in terms of section 8.

8. Application for a Private Cemetery

(1) An application to establish a private cemetery, or for the municipality to approve the continued use of a private cemetery must be made in writing to the municipal manager. The application must include—

- (a) A locality plan to a scale of not less than 1:10 000, showing the position of a proposed or existing cemetery in relation to the boundaries of the land on which it is either proposed to be established or upon which it is already situated, and a registered description of the site showing 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 at least 1 in 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 at least 1 in 100 of any building existing or proposed to be erected, which shall in the latter case conform with the building and sewage by-laws of the municipality;
- (d) A list of registers or records kept, or proposed to be kept, for the identification of graves, the sale or the transfer of grave sites and interments;

- (e) The full names and addresses of the owner and the supervisor;
- (f) The nature of the title under which the owner of the private cemetery holds or will hold the land on which the cemetery is or will be used as a cemetery, and whether the land is encumbered in any way;
- (g) Proof, to the satisfaction of the municipality, that the owner has adequate financial measures and insurance to be able to discharge the obligation of maintaining the private cemetery and all existing and future graves; and
- (h) A schedule of burial fees proposed to be charged or currently being charged.

(2) On receipt of the application referred to in subsection (1), the municipal manager must place a notice in at least one newspaper, in an official provincial language, circulating within the municipality stating the nature of the application and specifying a date, being not less than 14 days, by which objections to the granting of the application must be lodged with the municipal manager.

(3) Within 7 days of the closing date for the lodging of objections, the municipal manager must submit the application to the municipality for consideration by the municipality.

(4) The municipality must consider the application and any objections to it that may have been lodged within 30 days. If, after consideration of the application and any objection to it, the municipality is satisfied that no interference with any public amenity, or nuisance or danger to the public health is likely to take place or arise, the municipality may authorise, in writing, the establishment or the continued use of the proposed private cemetery, in accordance with the written application submitted to the municipality in terms of subsection (1).

(5) If approval is granted for the establishment or continued use of a private cemetery, or for the continued use of a private cemetery in terms of subsection (4), no departure from the plans submitted in terms of subsection (1) may be made without the approval of municipality in writing.

9. Duties of the Owner of a Private Cemetery

Every owner of a private cemetery which has been authorised in terms of section 8(4) to establish or continue the use of a private cemetery shall—

- (a) maintain a burial register in accordance with section 21 of the Births and Deaths Registration Act, 1992 (Act 51 of 1992);
- (b) maintain a duplicate copy of the burial register referred to in subsection (a) at a place other than the place where the burial register referred to in subsection (a) is kept;
- (c) keep a record or records showing—
 - (i) the number of each grave site and the ownership of the ground in which the grave is situated; and
 - (ii) the number of interments in each and every grave site and the name, age, sex, race, last known address, date and cause of death of each person interred in it;

- (d) Comply with the provisions of Chapter 3 and any other relevant provisions of the Births and Deaths Registration Act, 1992 (Act 51 of 1992);
- (e) maintain all grounds, fences, gates, roads, paths and drains in good order and condition and clear of weeds and overgrowth;
- (f) provide for the identification of grave sites by subdividing the cemetery into blocks containing a number of graves or grave sites and demarcated by means of signs showing the number and situation of each block;
- (g) separately number every grave site in each block by means of a durable number plate;
- (h) maintain all signs and number plates in a neat and legible condition;
- (i) allow the municipality or its duly authorised officers to enter and inspect the cemetery, the burial register, and all records kept in connection therewith;
- (j) render a monthly report on all burials to the municipal manager on a date to be determined by the municipal manager, detailing the name, last known address, age, sex, race, date and cause of death of every deceased person who has been interred, and the name of the medical practitioner who issued the certificate of death, a copy of the burial order, the authority who issued the burial order, the block and grave site number, and the date of interment;
- (k) render an annual return to the municipal manager on a date to be determined by the municipal manager, detailing the names and addresses of all trustees, committee members and persons controlling the private cemetery, if there be any;
- (l) appoint a supervisor to manage the cemetery and keep the requisite records;
- (m) the appointment and any subsequent appointment of a supervisor must be reported to the municipal manager in an appropriate monthly report submitted to the municipal manager in terms of subsection (j); and
- (n) comply with any other conditions prescribed by the municipality.

CHAPTER 4: SERVICE PROVIDERS

10. Agreement, Delegation and Customer-Care Charter

(1) The municipality may discharge all or any of its obligations under these by-laws for the rendering of cemetery services by entering into a service delivery agreement with a service provider or service providers in terms section 81(2) of the Systems Act: Provided that it shall not be discharged from its obligation to enforce these by-laws or to monitor whether they have been complied with by the service provider or any other person.

(2) Subject to the provisions of the Systems Act or any other law, the municipality may assign to a service provider any power enjoyed by it under these by-laws but may do so only if the assignment is necessary to enable the service provider to discharge an obligation under the service delivery agreement.

(3) Any reference in these by-laws to “municipality or service provider” must be read as

applying only to the municipality if there is no relevant service delivery agreement and, if there be a service delivery agreement it must be read as applying to the service provider.

(4) Without derogating from the generality of the provisions of subsection (1), the municipality may not discharge an obligation to monitor and enforce the provisions of these by-laws by entering into an agreement with a service provider to do so.

(5) A service provider employed in terms of subsection (1) must prepare a customer care charter which shows how the service provider intends to deal with complaints and customer care.

11. Tariffs

(1) Notwithstanding the provisions of section 10(1), the municipality retains the responsibility to establish maximum tariffs for cemetery services.

(2) The municipality must evaluate and promulgate maximum tariffs annually, prior to 1 July of each year.

CHAPTER 5: DISPOSAL OF A BODY

12. Disposal of a Body

(1) No person may, save with the prior written permission of the municipality, dispose of or attempt to dispose of a body, other than—

- (a) by interment in a private cemetery established or approved in terms of sections 7 or 8 or a public cemetery established by the municipality in terms of section 2(1), and in accordance with the procedure set out in Chapter 7 of these by-laws; or
- (b) by cremation in a crematorium as regulated by Chapter 12 of these by-laws.

(2) No body intended for burial or cremation may be presented at a cemetery or crematorium unless being first enclosed in a sealed body bag or placed within a coffin, except where there is an objection thereto on religious grounds.

(3) Where there is an objection to a coffin or body bag on religious grounds, the body must be covered in a burial shroud or other suitable perishable material.

13. Funeral Undertakers

(1) Subject to the provisions of sections 20, 33, 34 and 39 of the Health Act, no funeral undertaker shall enter into a contract to bury or cremate any body in any cemetery or crematorium under the control of the municipality unless—

- (a) the funeral undertaker is in possession of a certificate of competence issued by the municipality in terms of the Health Act;
- (b) the premises from which the funeral undertaker operates is zoned in accordance with any law relating to where such business may be carried out; and
- (c) all the requirements of a funeral undertaker and a funeral undertaker's premises in terms of the Health Act have been complied with.

(2) The municipality may, after giving reasonable notice to an undertaker of its intention to conduct an inspection, enter into and inspect the undertaker's premise to enable it to determine whether subsection (1)(b) and (1)(c) have been complied with.

(3) Undertakers must keep records of all the bodies which they receive and of the burial orders for these bodies.

(4) Any supervisor may refuse to bury a body presented for burial by an undertaker who has not complied with these by-laws.

(5) Where a supervisor refuses such a burial, the refusal must be reported in writing to the municipality with the reasons for refusal within 7 days of the refusal.

14. Register

(1) The supervisor of a cemetery must maintain a burial register in accordance with section 21 of the Births and Deaths Registrations Act, 1992 (Act 51 of 1992).

(2) The supervisor must maintain a duplicate copy of the burial register referred to in subsection (1) at a place other than the place where the burial register referred to in subsection (1) is kept.

CHAPTER 6: FUNERALS

15. Religious Ceremonies

(1) The members of any religious denomination may, subject to these by-laws and the control of the municipality, conduct religious ceremonies in a cemetery in connection with any interment or memorial service.

(2) Religious ceremonies according to the rites of any denomination may only be conducted in the section of a cemetery set apart by the municipality for members of that denomination.

16. Exposure of Corpses

No person shall convey a corpse which is not covered, or expose any corpse or any part of it in any street, part of the cemetery which the public has access to or public place.

17. Instructions of the Supervisor

Every person taking part in any funeral procession ceremony shall comply with the directions of the supervisor within a cemetery.

18. Music and Singing

No music or singing will be allowed in a cemetery, except for sacred singing, and except in a police or military funeral, without the supervisor's permission.

19. Structures used for Religious Services or Rites

No person shall occupy any chapel or shelter or any other structure used for religious services or rites in a cemetery for more than 45 minutes, unless authorised to do so by the supervisor of the cemetery.

20. Hours for Interments

(1) Subject to the provisions of subsection (2), interments shall take place during the following hours:

- (a) on a Monday to Thursday, excluding public holidays, from 09:00 to 15:30; and
- (b) on a Friday, excluding public holidays, from 09:00 to 14:00.

(2) The supervisor may, upon payment of the prescribed charge, allow interments to take place after the hours referred to in subsection (1) on weekdays and also on Saturdays, Sundays and public holidays.

(3) If the interment commences or is completed after the hours referred to in subsection (1), the charges will be payable as prescribed in the cemetery tariffs.

21. Numbering of Graves

(1) Until such time as a memorial has been erected on a grave, the supervisor shall fix and maintain an identification plate on every grave plot in the cemetery.

(2) No person shall inter a body in any grave which has not been allotted by the municipality.

CHAPTER 7: INTERMENTS

22. Application for Use of a Grave

(1) No person shall inter or cause to be interred, any body within any cemetery without the permission of the supervisor, which may only be granted on the submission to him or her of the original burial order authorising interment, together with the notice referred to in subsection (2).

(2) A person wishing to have a body interred must notify the supervisor on a form prescribed by the municipality not less than eight hours before the desired time for the interment.

(3) The application must be signed by the nearest surviving relative of the person whose body is to be interred in the grave, or by someone whom the nearest surviving relative has authorised to sign the application on his or her behalf.

(4) If the supervisor is satisfied that the signature of the nearest surviving relative cannot be obtained promptly, he may, grant permission to inter a body on an application signed by any other interested person.

(5) Not more than one interment may be made in a grave, except with the written permission of the supervisor.

(6) Where there has been an interment in a grave, and where a deeper grave is subsequently required for the interment of another body in the same grave, application to inter the other body must be made to the supervisor when notice of the first interment is given to the supervisor.

(7) A second interment in the same grave will not be allowed within one year of the date of the first interment.

(8) Not more than three bodies may be interred in the same grave.

(9) The municipality may, upon application and in its sole discretion, inter any body without any charge in whatever place and manner as it considers fit.

(10) No body shall be interred unless it is placed in a coffin as described in section 30, unless there is an objection thereto on religious grounds in terms of section 12(2).

23. Purchase of Burial Rights

(1) The municipality or service provider may sell the right to use any piece of ground for a grave to any person.

(2) Any person wishing to purchase the right to use a piece of ground for a grave must apply to the municipality.

(3) The piece of land in respect of which a right of use is sold must be allotted by the municipality and the holding and exercising of the right shall be subject to the cemetery by-laws.

(4) The purchase price of the right to use a piece of land for a grave shall be a prescribed tariff and the purchaser shall not be entitled to use the land as a grave until the price is paid.

(5) Upon the death of a person the nearest relative shall have the right, on payment of the charges determined from time to time by the municipality, to purchase one adjoining grave, if it be available, for future use.

24. Rights Not Transferable

(1) No person shall, without the consent of the municipality or service provider, sell or transfer to any other person any right relating to a grave or niche which he has obtained or may obtain in terms of the provisions of these by-laws.

(2) Every acquisition of the right to use a piece of land as a purchased grave or to make use of a niche shall be registered by the municipality and the charge determined from time to time by the municipality shall be paid to the municipality by the new user.

(3) The municipality or service provider may repurchase the right to an unused grave or niche if this is necessary either for the efficient administration of the cemetery or because of any reasonable environmental considerations.

(4) Where the municipality repurchases a right to use land for a grave, it must provide just compensation to the user which shall not be less than the initial purchase price and which shall make an allowance for inflation.

(5) The right to a niche shall accrue to the municipality without any compensation when the ashes of a deceased are removed or when the commemorative plate is removed from a niche.

25. Permission to Inter

(1) Subject to the provisions of subsection (2), the supervisor may not grant permission to inter a body where—

- (a) a burial order in terms of the Births and Deaths Registration Act, 1992 (Act 51 of 1992) has not been presented to the supervisor;
- (b) all appropriate tariffs, as prescribed by the municipality, have not been paid; and
- (c) an application in terms of section 22(2) has not been made.

(2) Where, in the opinion of the supervisor, circumstances are exceptional he or she may grant permission to inter a body where the requirements in subsections (1)(b) and (1)(c) have not been met.

26. Alteration of Date of Interment

Should any alteration be made to the day or hour that has been previously fixed for an interment, notice of the alteration shall be given to the supervisor at the cemetery at least 6 hours before the time that had been fixed for interment.

27. Dimensions of Grave Openings

(1) Graves for adults shall have at least the following dimensions:

- (i) a length of 2 200 millimetres;
- (ii) a width at the position of the shoulders of 900 millimetres;
- (iii) a width at the position of the head of 600 millimetres;
- (iv) a width at the position of the feet of 500 millimetres; and
- (v) a depth of 1 900 millimetres.

(2) Graves for children shall have the following dimensions:

- (i) a length of 1 400 millimetres;
- (ii) a width at the position of the shoulders of 500 millimetres;
- (iii) a width at the position of the head of 450 millimetres;
- (iv) a width at the position of the feet of 330 millimetres; and
- (v) a depth of 1 500 millimetres.

(3) Where the interment of any body requires an aperture in excess of the standard dimensions, the notice of interment must specify the dimensions of the coffin and its fittings.

28. Children's Coffins which are too Large for a Child's Grave

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

29. Covering with Earth

There shall be at least 1 200mm of earth between the top of any adult's coffin or body bag and the surface of the ground and at least 900 mm of earth between the top of a child's coffin or body bag and the surface of the ground. Every coffin or body bag shall, upon being placed in a grave, be covered by at least 300mm of earth without delay.

30. Coffins in Graves

No person shall place in any grave, or cause to be placed in any grave, any coffin constructed from any material other than soft wood or other perishable material, without the written consent of the supervisor but any attachments that normally form part of a coffin need not be made of soft wood or other perishable material.

31. Number of Bodies in One Coffin

(1) Subject to the provisions of section 22(5) two or more bodies of members of the same family may be buried in the same coffin where –

- (a) two members of a family die together, including, but not limited to two persons who were married to one another;
- (b) a mother and child or children die during childbirth; or
- (c) two unmarried persons of the same or different sex whom the user believes on reasonable grounds to have lived together as man and wife, who die at the same time.

(2) Anatomy remains of two or more bodies may be buried in the same grave.

(3) Where more than one body is buried, the user will be liable to pay the tariff prescribed for each of the bodies.

32. Interment of Deceased Persons Resident Outside the Municipality

(1) Subject to subsection (2), the municipality may in its discretion permit the interment of a deceased person who was resident outside the municipal area.

(2) Where a person has been granted a right in terms of section 23, the municipality must permit the interment of that person even if he was resident outside the municipal area at the time of death.

33. Pauper and Indigent Burials

(1) The body of a pauper or an indigent person must be buried at the cost of the municipality at a cemetery to be determined by the municipality.

(2) In the case of an indigent person, the municipality or service provider shall take all reasonable steps to ascertain the religion of the deceased and bury him in the section of the cemetery set apart for members of that denomination.

CHAPTER 8: EXHUMATION OF BODIES AND RE-OPENING OF GRAVES

34. Disturbance of Human Remains

Subject to these by-laws, the provisions of an exhumation order given in terms of the Inquests Act, 1959 (Act 58 of 1959), section 46 of the Health Act, or any other provision of any law relating to the exhumation of bodies, no person shall disturb any mortal remains or any ground surrounding them in any cemetery.

35. Opening of Graves

(1) Subject to the provisions of any law pertaining to the exhumation of a corpse, no grave may be opened without the written consent of the following authorities:

- (a) the Department of Health for the province in which the municipality is situated; and
- (b) the municipality.

(2) In addition to the consent required in subsection (1), where a grave is older than 60 years and is situated outside a cemetery administered by the municipality, or constitutes a grave of a victim of conflict, the approval of the South African Heritage Resources Authority or the Provincial Heritage Resources Authority established for the province if there be one, is required through the issuing of a permit in terms of section 36(3) of the National Heritage Resources Act, 1999 (Act 25 of 1999).

(3) No person may disinter, remove, re-inter or cremate a body buried in a Commonwealth war grave, or otherwise interfere with a Commonwealth war grave or a Commonwealth war burial other than in accordance with the Commonwealth War Graves Act, 1992 (Act 8 of 1992).

36. Exhumations

(1) Subject to the provisions of sections 34 and 39, no person shall exhume or cause any corpse to be exhumed or removed without the written consent of the municipality and the medical officer of health.

(2) The charges for exhumation determined from time to time by the municipality shall in every case be paid before the exhumation takes place.

(3) The written consent of the municipality must be submitted to the supervisor at least two days before the date fixed for the exhumation or removal of a corpse.

37. Screening of Activities

An undertaker must effectively screen the grave, from which any corpse is to be removed, from public view during the exhumation.

38. Persons to be Present During Exhumations

No exhumation or removal of any body or human remains shall take place unless the medical officer of health and a member of the South African Police Service are present.

39. Transfer of Buried Corpses

Should the transfer of a corpse be considered expedient by the municipality at any time, or should any provision of these by-laws be contravened during the interment of a corpse in any grave, the municipality may, after having complied with any applicable provincial or national legislation and these by-laws, transfer the corpse to another grave and where it is reasonably possible to do so, a relative of the deceased person must be notified of the transfer.

CHAPTER 9: CARE OF GRAVES

40. Care of Graves

The municipality or service provider shall keep graves clear of weeds and in proper order.

41. Shrubs and Flowers

(1) No person, other than the supervisor, may plant any shrub, tree, plant or flower upon any grave in the cemetery.

(2) No shrub, tree, plant or flower in the cemetery may be cut or removed by any person without the consent of the supervisor.

(3) The supervisor shall have the right to prune, cut down, dig up or remove any shrub, tree, plant or flower in the cemetery at any time without the necessity of obtaining permission of any person or court to do so.

CHAPTER 10: ERECTION AND MAINTENANCE OF MEMORIAL WORK

42. Memorial Work

No person shall, unless the charges as determined from time to time by the municipality have been paid, and the consent in writing of the supervisor and of the user for such grave has been obtained, bring any memorial work into a cemetery, or, after its having been brought into it, erect, alter, paint, renovate, remove or otherwise interfere with it, or cut any inscription on it.

43. Waiting Period before Erecting of Memorial

No memorial may be erected in the monumental section before six months from the date of interment, unless the supervisor, after consideration of written representations, and subject to the conditions set out in subsections (a), (b) and (c), grants approval that—

- (a) sufficient provision was made for the stabilisation of the ground, and that any displacement of the memorial work will be rectified by the user;
- (b) the relatives indemnify the municipality against any claims arising as a result of damages caused to the memorial because of subsidence; and
- (c) the erector of the memorial undertakes in writing to repair memorials, which were damaged because of subsidence.

44. Position of Memorial Work

No person shall erect any memorial work on any grave except in a position approved by the supervisor or as otherwise provided for in these by-laws.

45. Repairs to Memorial Work

(1) Should a person who has erected any memorial work to fall into a state of disrepair that may, in the opinion of the supervisor, cause danger to any person or thing situated in the cemetery, or to deface or damage the cemetery, the supervisor may order him or her by notice in writing, to make whatever repairs that the supervisor may consider necessary.

(2) Should the address of the user be unknown to the supervisor, the notice may be published in an official language in any daily newspaper circulating within the municipality in terms of section 70(1)(c).

(3) If the required repairs are not carried out within one month of the posting of the notice or the publication of it in a newspaper, the supervisor may him or herself carry out the repairs or remove the memorial work without paying any compensation and may recover the cost of the repairs or of removal from the person who erected the memorial work.

46. Supervision of Work

Any person engaged upon any memorial work in a cemetery shall effect it in accordance with the plan that was submitted and to the satisfaction of the supervisor.

47. Damaging of Memorial Work

Save in the case of intentional or negligent acts of the municipality or service provider, the municipality or service provider shall not be liable to compensate any person for any damage which may at any time occur to any memorial work.

48. Moving of Memorial Work

The supervisor may, after due notice to the user, at any time, change or alter the position of any memorial work without any leave of any person or court and recover the cost of doing so from the user of such memorial work. Provided that in any case where any memorial work has originally been placed in a particular position with the consent of the supervisor, any alteration to that position shall be done at the expense of the municipality.

49. Bringing Material into Cemetery

(1) No person shall bring any material into the cemetery for the purpose of constructing any memorial work on any grave, or to erect a commemorative plaque in the garden of remembrance, unless—

- (a) a sketch together with the essential dimensions, in metric units of linear measurements of the proposed memorial, and showing the position of the proposed work, accompanied by a specification of the materials to be used, in addition to a copy of any proposed inscription, has been submitted to the supervisor at least fourteen days prior to the date on which such material is intended to be brought into any cemetery;
- (b) all charges due in respect of such grave or niches have been paid;

- (c) the supervisor's written approval of the proposed work has been given; and
- (d) the grave number has been engraved on the memorial work.

50. Approval and Removal of Memorial Work by the Supervisor

(1) Subject to the right of an affected person to appeal to the municipality or service provider against any rejection by the supervisor, the supervisor may reject any proposed design or material for a memorial, which he considers to be unsuitable.

(2) In exercising his powers under subsection (1), the supervisor must not consider the inscription as part of the design of the memorial.

(3) Any memorial which is not erected to the satisfaction of the supervisor must either be rectified by the user within one month after having been notified in writing by the supervisor to do so, or be removed by him or her at his or her own expense.

(4) No person shall remove or disturb any memorial within any cemetery without the permission of the supervisor.

51. Requirements for Erection of Memorial Work

(1) Memorial work shall be in accordance with the following requirements:

- (a) where any part of any memorial work is to be joined to any other part, copper or galvanized iron pins of approved thickness and 160 millimetres long shall be used for such purpose and the holes, into which these pins must fit, shall be not less than 80 millimetres deep;
- (b) any part of such work resting upon the ground or any stone or other foundation shall be fairly squared and bedded;
- (c) no stone of uneven thickness, or having any corner wanting, shall be used unless it has been shown on the sketch submitted in terms of section 49(1)(a);
- (d) the underside of each memorial shall be set at least 50 millimetres below the natural level of the ground and on an adequate concrete foundation;
- (e) without the written consent of the supervisor, no kerb stones shall be used which protrude more than 250 millimetres above the surface of the ground or are more than 200 millimetres thick;
- (f) all head and curbstones shall be properly secured from the inside with round copper or galvanized iron pins;
- (g) all headstones up to 150 millimetres in thickness shall be securely attached to the base in an acceptable manner;
- (h) all memorial work shall be complete as far as possible before it is brought into any cemetery;
- (i) in the case of single graves, foot kerbs shall consist of one solid piece;
- (j) memorial work shall be made of marble or granite or any other SANS-approved hard

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- stone, subject to the approval of the supervisor;
- (k) no person shall do any stonework, chiselling or other work upon any memorial work not connected with the fixing of such memorial work within any cemetery except where such work is expressly permitted in terms of these by-laws;
- (l) if a memorial rests on a base—
- (i) it must be set on a concrete foundation approved by the supervisor;
 - (ii) it shall be set in good cement mortar; and
 - (iii) the base shall be not less than 1 000 millimetres by 330 millimetres by 330 millimetres;
- (m) the concrete foundation to the headstone shall have the following dimensions:
- (i) the length, at right angles to the longitudinal axis of grave, must be at least 1 300 millimetres;
 - (ii) the width must be not less than the width of the bottom of the headstone plus a projection of 160 millimetres either side; and
 - (iii) the depth must be not less than 160mm;
- (n) the concrete foundation for the kerbing shall extend across the foot of the grave plot and shall be of the following dimensions:
- (i) the length must be at least 1 220 millimetres;
 - (ii) the width must be at least 330 millimetres; and
 - (iii) the depth must be at least 110 millimetres; and
- (o) the tops of all concrete foundations shall be not less than 60 millimetres below ground level.

(2) Lettering upon a memorial must be engraved in it unless it has lettering that protrudes from the surface of the memorial work in which case such lettering must be of durable material and fixed permanently upon the memorial work without protruding more than 1 centimetre from the surface of the memorial work.

(3) With the consent of the supervisor and the user, the name of the maker may be engraved on the memorial work.

(4) The supervisor may require that uniform letter sizes and spaces be used for such engraving.

52. Conveying of Memorial Work

(1) The conveying of any stone, brick, or memorial work or any part of it along paths between graves may be undertaken only by means of a trolley fitted with pneumatic tires.

(2) No trolley shall be moved along any path which in the opinion of the supervisor is too narrow or unsuitable for conveyance by a trolley.

53. Vehicles and Tools

The supervisor may prohibit the use of any vehicle, tool or other appliance by a person working on a grave.

54. Complying with the Supervisor's Directions

Any person carrying on any work within a cemetery shall at all times comply with the directions of the supervisor.

55. Rubbish and Damage to Cemetery

No person shall at any time leave any rubbish, soil, stone or other debris within any cemetery or in any way damage or deface any part of any cemetery or anything contained in it.

56. Times for Bringing in Material and Doing Work

(1) No person shall bring memorial work or material or do any work in a cemetery on public holidays or outside of the hours of 07h00 to 16h00 during Mondays to Fridays.

(2) In exceptional cases the supervisor may permit work to be done outside of the times prescribed in subsection (1), but only if the prescribed charges determined from time to time by the municipality have been paid.

57. Inclement Weather

(1) If the supervisor decides that it is undesirable to place or fix memorial work because the weather is inclement or because the soil is in an unsuitable condition, he may prohibit its being placed or fixed until he permits the work to begin or continue.

(2) The supervisor may decide when the weather is inclement weather or when the soil is in an unsuitable condition.

58. Production of Written Permission

Any person who undertakes any work within any cemetery shall, upon demand by the municipality, produce the written consent issued to him or her in terms of section 42.

CHAPTER 11: ALL SECTIONS

59. Adornment of Graves

(1) No person shall, except with the consent of the supervisor, erect, place or leave upon or around a grave any railings, wire-work, flower stand, ornament, wreath, embellishment or other object of any kind, other than a vase, and any flowers and foliage in it.

(2) No person shall erect, place or leave upon or around a grave any railings, wire-work, flower stand, ornament, wreath, embellishment or other object of any kind in the aesthetic section.

(3) Where the supervisor considers whether to grant consent for the adornment of any grave in terms of subsection (1), he must take into consideration the cultural and religious values of the local community as well as the cultural and religious values of the deceased who has been interred in it.

(4) Fresh flowers and foliage placed on a grave with the consent of the supervisor in terms of subsection (1) may be removed by him or her when in his or her opinion they have faded.

(5) A memorial may incorporate not more than two vases or other receptacles for flowers or foliage.

60. Monumental Section

- (1) The following provisions shall apply to the monumental section of a cemetery, if there be one:
- (a) no memorial, which is erected, shall exceed a height of 1500 millimetres unless an adequate foundation for a memorial in excess of that height has been incorporated in the design; and
 - (b) no planting of any kind, except with the permission of the supervisor, shall be allowed on a grave.

61. Aesthetic Section

- (1) The following provisions shall apply to the aesthetic section of a cemetery, if there be one:
- (a) no kerbing or any form of base shall be erected;
 - (b) the headstone memorial shall be erected only on the concrete strip provided by the municipality;
 - (c) the pedestal of the memorial shall not exceed 800 millimetres by 260 millimetres unless the memorial is to be erected on two adjoining grave plots, in which case the measurements may be 1 220 millimetres by 260 millimetres;
 - (d) no memorial shall overhang the pedestal at any point and it shall be erected on the berm with the edge nearest to the grave being at least 120 millimetres from the edge of the berm;
 - (e) the height of memorial shall not exceed 1000 millimetres, including the bar;
 - (f) the municipality retains the right to flatten any remains of soil or fill any subsidence of a grave to the level of the adjoining undisturbed ground;

- (g) except for a memorial or vase for flowers or foliage which may be placed in the space provided on the berm, no object may be placed or kept on any grave after six months of the date of interment;
- (h) the supervisor may remove any object, which has been placed on a grave; and
- (i) excluding the vase for flowers or foliage in the berm, no memorial may contain more than one additional container for flowers or foliage.

CHAPTER 12: CREMATORIA

62. Cremation

(1) No person shall dispose of a body in any manner other than by interring it in a cemetery or having it cremated in a crematorium that is approved of in law.

(2) No person shall dispose of a body by cremation other than in conformity with the requirements of any law relating to cremation.

(3) The ashes remaining after a cremation, may, with the written consent of the supervisor, be interred in a public or private grave in which the body of a relative or any other person has already been interred.

(4) If ashes are not collected after a cremation, they may be strewn in a garden of remembrance by the supervisor.

63. Coffins

Coffins intended for cremation shall be constructed principally out of timber or wood derivatives, as regulated by applicable legislation.

CHAPTER 13: ADMISSION TO CEMETERIES AND PROHIBITED CONDUCT

64. Admission of Visitors

(1) Every cemetery shall be open to the public during the following hours:

- (a) from 1 September to 30 April: 07:00 to 18:00; and
- (b) from 1 May to 31 August: 07:00 to 17:30.

(2) Notwithstanding the provisions of subsection (1) the municipality shall have the right to close any cemetery or part of it to the public for such period as it may consider fit if it is, in the opinion of the municipality, in the interests of the public to do so.

(3) No person shall enter into or remain in any cemetery, or part of it, before or after the times set out in subsection (1) or during any period when it is closed to the public.

(4) No person under 12 years of age may enter any cemetery unless in the care of a responsible person.

65. Dress

The municipality may prescribe the apparel that it considers appropriate for entry into a cemetery but, in doing so, must not unfairly discriminate between persons on the basis of race, religion or gender.

66. Prohibited Acts Within Cemeteries

(1) No person shall—

- (a) solicit any business, order or exhibit, distribute or leave any tracts, business cards or advertisements within any cemetery other than as provided for in section 51(3) of these by-laws;
- (b) sit, stand or climb upon or over any memorial work, gate, wall, fence or building in any cemetery;
- (c) commit any nuisance within any cemetery;
- (d) ride any animal or motorcycle within any cemetery, and no other vehicle may exceed a speed of 16 km per hour;
- (e) intentionally bring any animal, other than a guide dog, or bird, into a cemetery or allow an animal to wander in it;
- (f) plant, cut, pick or remove any plant, shrub or flower without the permission of the supervisor;
- (g) hold or take part in any demonstration in any cemetery;
- (h) hinder any officer, workman or labourer employed by the municipality in any cemetery during the performance of his or her duties;
- (i) obstruct, resist or oppose the supervisor in the course of his or her duty or refuse to comply with any order or request which the supervisor is entitled to make;
- (j) use or cause any cemetery to be used for any immoral purpose; or
- (k) mark, draw, scribble, erect advertisements or objects on any wall, building, fence, gate, memorial work or other structure within any cemetery or in any other way deface them.

(2) Where it is appropriate to do so, the assessment of what constitutes a prohibited act in terms of subsections (1)(c) and (1)(j) the social and cultural values of the local community should be taken into account.

(3) The supervisor must place a notice in the cemetery setting out the prohibited conduct.

67. Keeping to the Paths

All persons shall use only the roads, walkways and paths provided in the cemetery.

68. Entrance to and Exits from Cemeteries

No person shall enter or leave any cemetery except by the gates provided for that

purpose and no person shall enter any office or fenced place in a cemetery except in connection with lawful business.

69. Offences

- (1) Subject to subsection (2), any person who –
 - (a) contravenes or fails to comply with any provisions of these by-laws, other than a provision relating to payment for cemetery services;
 - (b) fails to comply with any notice or order issued or condition imposed in terms of or for the purposes of these by-laws;
 - (c) fails to comply with any lawful instruction given in terms of or for the purposes of these by-laws; or
 - (d) who obstructs or hinders any authorised representative or employee of the municipality in the execution of his duties under these by-laws;

is guilty of an offence and liable on conviction to a fine or in default of payment to imprisonment for a period not exceeding 6 months and in the case of any continued offence, to a further fine not exceeding R50, or in default of payment, to imprisonment not exceeding one day for every day during the continuance of such offence, after a written notice has been issued by the municipality and served on the person concerned requiring the discontinuance of such an offence.

(2) No person shall be liable to imprisonment if he is unable to afford to pay a fine, and shall instead be liable to a period of community service.

(3) Any person committing a breach of the provisions of these by-laws shall be liable to recompense the municipality for any loss or damage suffered or sustained by it in consequence of the breach.

(4) The supervisor may at any time order any person who does not comply with these by-laws in the cemetery or disturbs the sacred atmosphere in the cemetery in any manner, to leave the cemetery immediately in which event that person must forthwith comply with the order.

CHAPTER 14: GENERAL

70. Service of Notices

(1) Any notice, order or other document that is served on any person in terms of these by-laws must, subject to the provisions of the Criminal Procedure Act 1977 (Act 51 of 1977), be served personally, failing which it may be regarded as having duly been served—

- (a) when it has been left at that person's place of residence or business, or, where his household is situated in the Republic, when it has been left with a person who is apparently 16 years or older;
- (b) 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 either personally or in the manner provided by subsections (a), (c) or (d); or

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- (c) if that person's address and the identity or the address of his agent or representative in the Republic is unknown, when it has been published in an official language in any daily newspaper circulating within the municipality; or
 - (d) if sent by registered post, whether service by registered post is, or is not required, if effected by sending it by properly addressing to the addressee's last known residence, place of business or postal address, prepaying and posting a registered letter containing the notice, order or other document, and unless the contrary be proved, shall be presumed to have been effected at the time at which the letter would be delivered in the ordinary course of post.

(2) 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.

71. Compliance with Notices

Any person on whom a notice duly issued or given under this by-law is served shall, within the time specified in such notice, comply with its terms.

72. Repeal of By-Laws

The by-laws specified in the first column of Schedule 1 are hereby repealed to the extent set out in the second column of Schedule 1: Provided that the repeal of such by-laws shall not affect anything done in terms of or any right, obligation or liability acquired or incurred under those by-laws.

73. Date of Commencement

These by-laws commence on the date of publication in the Provincial Gazette.

SCHEDULE 1: BY-LAWS REPEALED

TITLE OF BY-LAW	EXTENT OF REPEAL
[To be inserted]	