

LOCAL GOVERNMENT NOTICE

EMALAHLENI MUNICIPALITY

The Municipal Manager hereby publishes, in terms of section 13 of the Local Government: Municipal Systems Act, 2000 [Act No. 32 of 2000] read with section 162 of the Constitution of the Republic of South Africa Act 1996 [Act No. 108 of 1996] the By-laws Relating to Cemeteries, Funeral Parlours and Crematoria that come into operation on the date of publication thereof.

BY-LAWS RELATING TO CEMETERIES, FUNERAL PARLOURS AND CREMATORIA

PREAMBLE

WHEREAS the Council of the Municipality is vested with legislative authority in terms of the Constitution of the Republic of South Africa, 1996;

AND WHEREAS the Council of the Municipality in the exercise of its functions has the right to regulate the establishment, conduct and control of all cemeteries, funeral parlours and crematoria under its control.

NOW THEREFORE be it enacted by the Council as follows:

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[1] DEFINITIONS

In this by-law, unless the context otherwise indicates —

“**adult**” means a deceased person over the age of 12 years and where the word is used to define a corpse, a deceased person whose coffin will fit into the grave opening prescribed for adults in section 15;

“aesthetic section” means a cemetery or section of a cemetery which has been set aside by the Municipality wherein only headstones may be erected;

“approved” means approved by the Municipality;

“ashes” means the cremated remains of a corpse;

“berm” means a concrete base laid at the head of a grave and on which a memorial is erected;

“burial” means interment in earth, a sepulchre or tomb;

“burial order” means an order issued in terms of the Births and Deaths Registration Act, 1992 [Act No. 51 of 1992];

“caretaker” means the official whom the Municipality appoints from time to time in a supervisory capacity with regard to a cemetery or crematorium;

“cemetery” means a land or part of a land within the municipal area set aside by the Municipality as a cemetery;

“child” means a person who is not an adult, and where the word is used to define a corpse, means a deceased person whose coffin will fit into the grave opening prescribed for children in section 18 and includes the corpse of a stillborn child and a foetus;

“columbarium” means a the place set aside in the basement of a crematorium or chapel containing rows of niches for the purpose of placing receptacles containing the ashes of cremated corpses therein;

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

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

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

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

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

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

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

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

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

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

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

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

“Municipality” means the Emalahleni Municipality established in terms of section 12 of the Municipal Structures Act, 1998 [Act No. 117 of 1998], and includes any political structure, political office bearer, councillor, duly authorised agent or any employee acting in connection with this by-law by virtue of a power vested in the Municipality and delegated or sub-delegated to such political structure, political office bearer, councillor, agent or employee;

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

“ordinance” means the Crematorium Ordinance, 1965 [Ordinance No. 18 of 1965];

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

“prescribed” means prescribed by the Municipality;

“prescribed fee” means a fee determined by the Municipality in its schedule of tariffs;

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

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

“tomb” means an above ground burial vault;

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

[2] PRINCIPLES AND OBJECTIVES

The purpose of this by-law is to –

- [a]** control funeral undertaker’s premises;
- [b]** make provision for the allocation of land for the purposes of the burial of human remains;
- [c]** develop and maintain existing cemeteries;
- [d]** permit residents to dispose of a corpse by cremation; and
- [e]** provide space allowing the preservation of the remains of a cremation in a dignified manner.

CHAPTER 1: GENERAL PROVISIONS RELATING TO CEMETERIES AND CREMATORIA

[3] APPOINTMENT OF A CARETAKER

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

[4] RESPECT FOR CUSTOMS

The caretaker must take into account the customs of the deceased person and the people responsible for the burial or cremation and must accommodate these within the framework of this bylaw.

[5] HOURS OF ADMISSION FOR PUBLIC

- [1]** Every cemetery must be open to the public during between 08:00 and 17:00: Provided that the Municipality may close a cemetery or crematorium, or part thereof to the public for such periods as the Municipality deems necessary.
- [2]** No person, excluding workers or persons with permission may be in or remain in a cemetery or crematorium or part thereof before or after the hours mentioned in sub-section [1] or during a period when it is closed to the public.
- [3]** A person who contravenes subsection [2] commits an offence.

[6] ADMISSION OF CHILDREN TO A CEMETERY OR CREMATORIUM

- [1]** No child under 12 years of age may enter a cemetery or crematorium unless under the care of a responsible person.
- [2]** A person who allows a child to enter a cemetery or crematorium in contravention of subsection [1] commits an offence.

[7] KEEPING TO PATHWAYS

A pathway in a cemetery may be used only for purposes permitted by this by-law and failure to do so constitutes an offence.

[8] PROHIBITED CONDUCT WITHIN CEMETERY AND CREMATORIUM

- [1]** No person within a cemetery or crematorium may –

 - [a]** cause a nuisance;
 - [b]** ride an animal or cycle without the permission of the caretaker;
 - [c]** allow an animal to wander;
 - [d]** plant, cut, pick or remove a tree, plant, shrub or flower without the permission of the caretaker;
 - [e]** hold or take part in a demonstration;

- [f]** interrupt an official, workman or labourer employed by the Municipality during the performance of his duties;
 - [g]** obstruct, resist or oppose the caretaker in the course of his or duties or refuse to comply with an order or request which the caretaker is entitled under this by-law to make;
 - [h]** mark, draw, scribble, erect an advertisement or object on a wall, building, fence, gate, memorial work or other structure;
 - [i]** use water for any form of gardening without the permission of the caretaker;
 - [j]** plant trees, flowers or shrubs in or between graves;
 - [k]** leave any rubbish, stone, litter or debris;
 - [l]** in any way damage or deface any part of a cemetery, crematorium, grave or memorial work.
 - [m]** enter or leave except by an entrance provided for the purpose;
 - [n]** solicit any business, order or exhibit, or distribute or leave a tract, business card or advertisement;
 - [o]** climb or sit on a grave or memorial work;
 - [p]** enter an office, building or fenced place, except in connection with lawful business;
 - [q]** with the exception of a blind person, bring an animal; and
 - [r]** expose a corpse or a part thereof.
- [2]** A person who contravenes a provision of subsection [1] commits an offence.

[9] RIGHT OF INTEREST IN GROUND

- [1]** No person will acquire any right to or interest in any ground or grave in a cemetery, other than those that may be obtainable under this by-law.
- [2]** The Municipality may, on payment of the prescribed fee, sell to a person the use of a grave in a section of a cemetery for a period not exceeding 20 years.

- [3] The Municipality may set aside different areas in a cemetery for exclusive use by different religious or cultural groups.
- [4] The Municipality may promote the environmental advantages of cremation as an alternative to burial.
- [5] The Municipality may, if compelled to do so by environmental considerations, such as shortage of land for burial, and subject to the provisions of any other law regarding the rights of a person, request that a corpse be cremated instead of interred.

CHAPTER 2: GENERAL PROVISIONS RELATING TO INTERMENT AND CREMATION

[10] CONSENT REQUIRED FOR INTERMENT AND CREMATION

- [1] No person may inter a corpse in a cemetery or have it cremated in a crematorium without the prior written consent of the caretaker.
- [2] A person who wishes to obtain the consent as contemplated in subsection [1] must submit to the caretaker an application in writing together with —
 - [a] the prescribed fee;
 - [b] a death certificate; and
 - [c] a burial order issued in terms of the Births and Deaths Registration Act, 1992; andthe caretaker may not approve the application unless all of the above requirements are met.
- [3] An application must be submitted to the caretaker in respect of —
 - [a] an interment where the Municipality is responsible for the digging of the grave, not later than 15:00 on the day before the intended interment, or, where the grave exceeds the standard size, not later than 15:00 two days before the intended interment; and

- [b] a cremation, not later than 15:00 on the day before the intended cremation.
- [4] Should any alteration be made in the day or hour previously fixed for an interment or cremation, or an interment or cremation be cancelled, in the instance where the Municipality is responsible for the digging of a grave, notice of the alteration must be given to the caretaker at least six hours before the time fixed for the interment or cremation, and no refund will be made on monies paid in respect of the opening of an existing grave.
- [5] The application contemplated in subsection [2] must be signed by the nearest surviving relative of the deceased person: Provided that if the caretaker is satisfied that the signature of the nearest surviving relative cannot be obtained without undue delay, or for any other valid reason, he may grant an application signed by any other interested person.
- [6] A person who disposes of a corpse in contravention of subsection [1] or who contravenes subsection [5] commits an offence.

[11] INTERMENT AND CREMATION TIMES

- [1] An interment and cremation must take place between 08:00 and 17:00.
- [2] Despite the provisions of subsection [1], the caretaker may permit an interment contemplated in subsection [1] in which case the Municipality may levy an additional fee an additional fee.
- [3] A person who interments or cremates a corpse in contravention of the provisions of sub-section [1] commits an offence.

[12] REGISTER

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

- [a] The particulars of the person who requested the interment or cremation;

- [b] the particulars of the deceased person such as the name, address, and identification number; .
- [c] the date of the interment or cremation; and
- [d] in the case of an interment, the number of the grave.

[13] INDIGENT AND DESTITUTE PERSONS

- [1] A person may apply to the Municipality for the burial or cremation of the corpse of an indigent person and must provide proof that the deceased was granted the status as indigent person by the Municipality and the Municipality may decide if the corpse is to be buried or cremated.
- [2] Subject to the provisions of section 48 of the Health Act, 1977, and section 10 of the Human Tissue Act, 1983, the corpse of a destitute person or an unclaimed corpse may be buried or cremated according to conditions determined by the Municipality.
- [3] Where a corpse of an indigent person is cremated, the caretaker of the crematorium must retain the ashes, and should the ashes not be claimed, bury the ashes in a grave.

[14] NUMBER OF CORPSES IN ONE COFFIN

- [1] Subject to the provisions of subsection [2], only one corpse may be contained in a coffin.
- [2] More than one corpse may be contained in one coffin if the consent of the caretaker has been obtained and the prescribed fee has been paid, in the case of —
 - [a] a mother and child who died during childbirth; or
 - [b] family members who —
 - [i] died together; or
 - [ii] died a short while after each other and the burial or cremation of the first dying family member has not yet taken place.

- [3]** A person who contravenes a provision of subsection [1] or who fails to obtain the consent as contemplated in subsection [2] commits an offence.

CHAPTER 3: INTERMENT

[15] DIMENSIONS OF GRAVES AND APERTURES

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

[16] DEPTH OF GRAVE

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

[17] RESERVATION OF GRAVE

- [1]** A grave may be reserved on submission of an application to the caretaker and the payment of the prescribed fee
- [2]** A restriction may be placed on the reservation of graves and reservations will be accepted only in respect of adult graves in the monumental section as stated in subsection [3].
- [3]** In the event of an interment of a husband or wife in the monumental section, only one additional adjoining grave may be reserved until the death of the surviving spouse.
- [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 death of the surviving spouse: Provided that the interment of the last-dying spouse may be permitted in the same grave subject to the provisions of section 14[2].
- [5]** Where another person, other than the applicant, has mistakenly used a grave, the caretaker must allocate another grave in the cemetery to the applicant.

[18] CHILD'S COFFIN TOO LARGE

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

[19] CONSTRUCTION MATERIAL OF A COFFIN

- [1]** A coffin interred in a grave must be constructed of wood or a biodegradable material.
- [2]** A person who interrs a coffin in contravention of subsection [1] commits an offence.

[20] NUMBER OF CORPSES IN ONE GRAVE

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

[21] COFFIN TO BE COVERED WITH EARTH

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

[22] RELIGIOUS CEREMONY

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

[23] HEARSE AND VEHICLE AT CEMETERY

- [1]** No hearse or other vehicle may enter a cemetery without the prior permission of the caretaker having been obtained.
- [2]** No hearse or other vehicle may enter a cemetery other than by the routes set aside for that purpose.
- [3]** A person who contravenes subsections [1] or [2] commits an offence.

[24] INSTRUCTION OF CARETAKER

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

[25] MUSIC INSIDE CEMETERY

- [1]** Singing and music is allowed in a cemetery, provided that the prior permission of the caretaker must be obtained.
- [2]** A person who contravenes subsection [1] commits an offence.

[26] INTERMENT ATTENDED BY MORE THAN FIFTY PEOPLE

When it is possible that more than 50 people might be present at an interment, the Municipality may require that the caretaker be notified.

[27] OCCUPATION OF CHAPEL LTER

[1] No person may for the purpose of a funeral occupy a chapel lter in a cemetery for more than 45 minutes.

[2] A person who contravenes subsection [1] commits an offence.

[28] NUMBERING OF GRAVE

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

[2] A person who-contravenes sub-section [4] commits an offence.

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

[29] DISTURBANCE OF MORTAL REMAINS

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

[a] no corpse or mortal remains or ground surrounding it in a cemetery may be disturbed;

[b] no grave may be re-opened; and

[c] no corpse may be removed from a grave, without the written consent of the Municipality.

[2] The prescribed fee for exhumation must be paid to the Municipality at least two days before the date fixed for the exhumation or removal of the corpse.

[3] A person who contravenes subsections [1] commits an offence.

[30] TIME OF EXHUMATION

- [1]** No person may exhume or cause a corpse to be exhumed during such time as the cemetery is open to the public.
- [2]** A person who contravenes subsection [1] commits an offence.

[31] RE-OPENING OF GRAVE

- [1]** No person may re-open a grave for the purpose of interring a second corpse in the same grave unless —
 - [a]** the grave was initially made deeper for this purpose;
 - [b]** if not made deeper, then only after 10 years have passed since the interment of the first corpse;
 - [c]** for purposes of burial of a receptacle containing ashes, the depth does not exceed 300 mm;
 - [d]** the consent contemplated in section 29[1] has been obtained; and
 - [e]** the fee prescribed by the Municipality has been paid.
- [2]** A person who contravenes a provision of subsection [1][a] to [d] commits an offence.
- [3]** The Municipality has the right to re-open a grave for the purpose of establishing, by reading the inscription on the coffin, the identity of the corpse.

CHAPTER 6: CARE OF GRAVES

[32] SHRUBS AND FLOWERS

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

[33] CARE OF GRAVE

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

CHAPTER 7: CREMATION

[34] RECEPTACLES AND ASHES

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

[35] BURIAL AND EXHUMATION OF ASHES

- [1]** In the absence of an arrangement between the caretaker and the person contemplated in section 34 regarding the ashes, the caretaker

may bury or scatter the ashes in a garden of remembrance where such facility is available.

- [2]** A person may deposit ashes in a —
 - [a]** grave; or
 - [b]** niche in a —
 - [i]** columbarium;
 - [ii]** wall of remembrance; or
 - [iii]** memorial work.
- [3]** A person must obtain the consent of the caretaker to —
 - [a]** bury ashes in grave;
 - [b]** exhume ashes from a grave; or
 - [c]** scatter ashes.
- [4]** The caretaker must, on receiving payment of the prescribed fee contemplated in sub-section [3] —
 - [a]** give-written consent to the applicant to bury, exhume or scatter the ashes; and
 - [b]** in the instance of burial or exhumation, prepare the grave for burial or exhumation.
- [5]** A grave for the burial of ashes or a niche in a columbarium must measure 610 mm in length, 610 mm in width, and 610 mm in depth.

[36] CREMATION CERTIFICATE

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

CHAPTER 8: ERECTION AND MAINTENANCE OF MEMORIAL WORK

[37] CONSENT OF MUNICIPALITY

- [1]** No person may bring into a cemetery, erect, alter, paint, clean, renovate, decorate, remove or otherwise interfere with any memorial work or cut any inscription thereon in a cemetery without the written consent of the Municipality.
- [2]** When erecting a memorial work, the Municipality may –
- [a]** require the submission of –
 - [i]** a plan which gives an indication of the measurements and the position;
 - [ii]** specification of the material of which the memorial work is to be constructed; and
 - [iii]** the wording on the epitaph; and
 - [b]** impose conditions.
- [3]** The plan contemplated in sub-section [2][a] must be submitted 30 days before the erection commences and must be accompanied by the prescribed fee.
- [4]** No person may bring any material for the construction of memorial work into a cemetery unless the provisions of subsection [1] to [3] have been complied with and unless all-charges due in respect such grave have been paid.
- [5]** The Municipality's consent of the proposed work is valid for six months only and must be resubmitted in the event of the memorial work not being erected within such six month period.
- [6]** The grave number must be indicated in clearly legible figures of 30 mm in size.
- [7]** A person who contravenes a provision of subsection [1] or [4] commits an offence.

[38] REQUIREMENTS FOR ERECTION OF MEMORIAL WORK

- [1]** A person erecting a memorial work must –
 - [a]** be in possession of a plan approved by the Municipality;
 - [b]** comply with conditions imposed in terms of section 39[3];
 - [c]** not cause any damage to any structure;
 - [d]** cause no offence;
 - [e]** ensure that where a memorial has a pedestal on ground level or on the berm, the pedestal does not exceed 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;
 - [f]** obtain the permission of the next of kin to display the name of the maker on a memorial work: Provided that 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
 - [g]** ensure that tiles in the Garden of Remembrance are 240 mm x 300 mm in size and manufactured out of non-corrosive metal.
- [2]** A person who does not comply with a provision in subsection [1] commits an offence.

[39] POSITION, MOVEMENT AND REMOVAL OF MEMORIAL WORK

- [1]** No person may erect a memorial work on a grave before the position has been indicated by the Municipality.
- [2]** Should the provisions of sub-section [1] not be complied with, the Municipality may move the memorial work and to recover the costs from the person who erected such memorial work.
- [3]** Where a memorial work has originally been positioned with the express consent of the Municipality or its employee, any alteration of the position in terms of the provisions of this section must be executed at the expense of the Municipality.

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

[40] REPAIRS TO MEMORIAL WORK

If the person who erected a memorial work allows it to fall into such a state of disrepair that it may cause danger or deface the cemetery, the Municipality may serve a Notice of Compliance, as contemplated in section 60, on such person.

[41] SUPERVISION OF WORK

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

[42] DAMAGING OF MEMORIAL WORK

The Municipality is not responsible for any damage to a memorial work, unless such damage is proved or conceded by the Municipality to be due to the negligence of its employees.

[43] CONVEYING OF MEMORIAL WORK

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

[2] A person who contravenes subsection [1] commits an offence.

[44] VEHICLE AND TOOLS

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

[45] COMPLYING WITH MUNICIPALITY'S DIRECTIONS

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

[46] TIMES FOR BRINGING IN MATERIAL AND DOING WORK

[1] No person may bring material into or do any work, other than the dismantling of memorial work for burial purposes within a cemetery, except between on Monday to Friday between the hours of 7:00 and 18:00.

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

[3] A person who contravenes sub-sections [1] or [2] commits an offence.

[47] INCLEMENT WEATHER

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

[2] A person who contravenes subsection [1] commits an offence.

[48] PRODUCTION OF WRITTEN PERMISSION

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

[49] MEMORIAL WORK IN CREMATORIUM

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

[2] A memorial work —

[a] if erected in a garden of remembrance —

- [i]** must be made of marble or granite; and
 - [ii]** may not exceed a size of 250 mm in width, 305 mm in length and 25 mm in thickness;
 - [b]** if intended to seal a niche, must conform in size and material to the memorial work next to it and may have a photograph of the deceased person affixed to it; or
 - [c]** erected on a grave, may not exceed 1,2 m in height, 610 mm in length and 610 mm in width.
- [3]** A person who erects a memorial work in contravention of subsection [1] or who contravenes a provision of subsection [2] commits an offence.

CHAPTER 9: SECTIONS IN CEMETERY

[50] MUNICIPALITY MAY ESTABLISH SECTIONS

The Municipality may establish one or more of the following sections in a cemetery –

- [a]** Monumental section;
- [b]** Garden of Remembrance;
- [c]** Heroes Acre;
- [d]** Aesthetic Section; or
- [e]** Panoramic Section.

[51] MONUMENTAL SECTION

- [1]** Memorial work may be erected upon the whole surface of the grave subject thereto that the provisions of section 38 must be complied with and that the following measurements may not be exceeded:
- [a]** Height: 2000 mm;
 - [b]** Width: 900 mm in case of a single grave and 700 mm in case of a double grave; and
 - [c]** Thickness: 250 mm.

- [2] A person commits an offence if he exceeds the measurements stipulated in subsection [1];

[52] GARDEN OF REMEMBRANCE

- [1] A container intended to be placed in a niche may not exceed 300 mm x 150mm x 150 mm in size.
- [2] Flowers and wreaths may only be placed on the places provided therefore.
- [3] A person who contravenes a provision of subsection [2] or [3] commits an offence.

[53] HEROES ACRE

- [1] No person may erect a structure in a Heroes Acre without the written approval of the Municipality.
- [2] The size of a structure contemplated in sub-section [1] must be 500 mm x 350 mm and must be manufactured from a non-corrodible metal or masonry.
- [3] A person who inters a corpse in contravention of subsection [1] or contravenes subsection [2] or who fails to comply with the requirements of subsection [3] commits an offence.

[54] AESTHETIC SECTION

- [1] Within an Aesthetics Section in a cemetery –
 - [a] only a headstone may be erected on a grave;
 - [b] a slab may not be erected on a grave; and
 - [c] 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 x 260 mm in width.
 - [ii] Double grave: 2200 mm in length x 260 mm in width.

- [b]** Child's grave:
 - [i]** Single grave: 610 mm in length x 260 mm in width.
 - [ii]** Double grave: 1200 mm in length x 260 mm in width.
- [3]** No headstone may exceed 1500 mm above the berm.
- [4]** A person who contravenes a provision of this section commits an offence.

[55] PANORAMIC SECTION

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

CHAPTER 10: PRIVATE CEMETERIES

[56] BY-LAWS APPLY

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

[57] ESTABLISHMENT AND CONTINUED USE OF CEMETERIES

- [1]** No person may establish a private cemetery without the prior consent of the Municipality and no proprietor of a private cemetery already in existence may, if the use of the cemetery was not previously authorised

by the Municipality, continue to use the existing cemetery for burial purposes.

- [2]** An application for the Municipality's consent to establish a cemetery or to use as cemetery as contemplated in subsection [1] must be in writing to the Municipal Manager, accompanied by —
- [a]** a locality plan to a scale of not less than 1:10000 that shows —
 - [i]** the position of the proposed cemetery or existing cemetery in relation to the boundaries of the land on which it is proposed to establish it or upon which it is situated;
 - [ii]** the registered description of the site; and
 - [iii]** all streets, public places and privately-owned property within a distance of 100 metres of the site;
 - [b]** a "block" plan to a scale of not less than 1:500 showing the position of external boundaries, internal roads and paths, subdivisions, grave sites, drainage and any buildings existing or proposed to be erected;
 - [c]** a plan and sections to a scale of not less than 1:100 of any building existing which must in this case conform to the National Building Regulations and the Water Services and Sanitation By-laws of the Municipality;
 - [d]** a list of registers or records kept or proposed to be kept with reference to —
 - [i]** identification of graves;
 - [ii]** sale or transfer of grave sites; and
 - [iii]** interments;
 - [e]** the full name and address of the proprietor;
 - [f]** particulars regarding the nature of the title under which the proprietor holds or will hold 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 charged.
- [3]** On receipt of an application in writing for the establishment of a private cemetery or the continued use of a private cemetery, the Municipal Manager must publish a notice in one or more newspapers circulating in its area stating the nature of the application and specifying a date, being not less than 30 days after the date of publication of the notice, by which objections to the granting of an application may be lodged with the Municipality.
- [4]** The Municipality may in writing grant consent for the establishment of the private cemetery or the continued use of the private cemetery –
 - [a]** upon receipt of the payment by the applicant of the prescribed fee; and
 - [b]** 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.
- [5]** No departure from the plans as approved are permitted without the written prior approval of the Municipality.
- [6]** A person who contravenes a provision of subsection [1] or [5] commits an offence.

[58] DUTIES OF PROPRIETORS

- [1]** The proprietor of a private cemetery, approved by the Municipality, must –
 - [a]** comply with any conditions imposed by the Municipality;
 - [b]** keep a record which shows –
 - [i]** the number of each grave site and the ownership of the site;
 - and

- [ii] the number of interments in each grave site and the name, age, gender, last known address, date and cause of death of the deceased;
 - [c] maintain the grounds, fences, gates, roads, paths and drains in good condition and clear of weeds and overgrowth;
 - [d] provide for the identification of grave sites by subdividing the cemetery into blocks and –
 - [i] each block must be demarcated by means of signs showing the number and situation of each block;
 - [ii] 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;
 - [e] allow an official to enter or inspect the cemetery and all records kept in connection therewith;
 - [f] render a monthly return to the Municipal Manager on or before the 7th day in each month of all burials, which sets out the —
 - [i] name, last known address, age, sex, date and cause of death of each deceased person interred in the cemetery;
 - [ii] name of the medical practitioner who issued the death certificate;
 - [iii] authority who issued the burial order;
 - [iv] block and grave site number;
 - [v] date of burial; and
 - [vi] particulars of a change in the identity of the caretaker or of a person newly appointment.
- [2] A person who contravenes a provision of subsection [1] commits an offence.

CHAPTER 11: MISCELLANEOUS

[59] AUTHENTICATION AND SERVICE OF ORDER, NOTICE OR OTHER DOCUMENT

- [1] An order, notice or other document requiring authentication by the Municipality is considered duly authenticated when signed by an official duly authorized to do so.
- [2] Any notice or other document that is served on a person in terms of this by-law is regarded as having been served –
 - [a] when it has been delivered to that person personally;
 - [b] when it has been left at that person's place of residence or business in the Republic with a person apparently over the age of sixteen years;
 - [c] when it has been posted by registered or certified mail to that person's last 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
 - [e] if that person 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 is deemed to be service of the original.
- [5] Any legal process is effectively and sufficiently served on the Municipality when it is delivered to the Municipal Manager or a person in attendance at the Municipal Manager's office.

[60] NOTICE OF COMPLIANCE AND REPRESENTATIONS

- [1]** A notice of compliance served in terms of section 38 must state –
- [a]** the name and residential and postal address, if either or both of these be known, of the person;
 - [b]** the nature of the state of disrepair;
 - [c]** sufficient detail to enable compliance with the notice,
 - [d]** the measures required to remedy the memorial work;
 - [e]** that the named person must within a specified time period take the measures stated in the notice to comply with the notice, to diligently continue with the measures and to complete the measures before a specific date;
 - [f]** that failure to comply with the requirements of the notice within the period contemplated in sub-section [e] is an offence;
 - [g]** that written representations, as contemplated in subsection [3] may, within the time period stipulated under sub-section [e] above, be made to Municipality at a specified place.
- [2]** The Municipality, when considering any measure or time period envisaged in subsections [1][e] and [f], must have regard to all relevant factors, including –
- [a]** the principles and objectives of this by-law;
 - [b]** the state of disrepair;
 - [c]** any measures proposed by the person on whom measures are to be imposed.
- [3]** A person may within the time period contemplated in paragraph [1][g] make representations in the form of a sworn statement or affirmation to the Municipality at the place specified in the notice.
- [4]** Representations not lodged within the time period will not be considered, except where the person has shown good cause and the Municipality condones the late lodging of the representations.

- [5]** The Municipality may, on its own volition, conduct any further investigations to verify the facts if necessary and the results of the investigation must be made available to the person, who must be given an opportunity of making a further response if he so wishes and the Municipality must also consider such further response.
- [6]** The Municipality must, after consideration of the representations and any responses received, make an order in writing and serve a copy of it on the person.
- [7]** The order must –
- [a]** set out the findings of Municipality;
 - [b]** confirm, alter or set aside in whole or in part, the notice of compliance; and
 - [c]** specify a period-within which the person must comply with the notice of compliance made by Municipality.
- [8]** If the notice of compliance is confirmed, in whole or in part, or is altered but not set aside, Municipality must inform the person that he –
- [a]** must discharge the obligations set out in the notice; or
 - [b]** may elect to be tried in court.
- [9]** If the person elects to be tried in court, he must, within seven calendar days, notify the Municipality in writing of his intention to be so tried.
- [10]** If the person does not elect to be tried in court, he must, within the prescribed manner and time discharge his obligations under the order.
- [11]** Where there has been no compliance with the requirements of a notice, the Municipality may take any steps necessary to repair the monumental work and recover the costs in accordance with section 61.

[61] COSTS

Should a person fail to take the measures required of him by notice, the Municipality may recover all costs incurred as a result of it acting in terms of sub-section 60[11] from the person.

[62] APPEAL

- [1]** A person whose rights are affected by a decision taken by an authorised official under 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 Municipal Manager must promptly submit the appeal to the appropriate appeal authority mentioned in subsection [4].
- [3]** The appeal authority 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.
- [4]** An appeal submitted in terms of this section must be dealt with in the manner prescribed by section 62 of the Municipal Systems Act, 2000 [Act No. 32 of 2000].

[63] PENALTIES

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

[64] EXEMPTIONS

- [1]** Any person may by means of a written application, in which the reasons are given in full, apply to the Municipality for exemption from any provision of this by-law.
- [2]** The Municipality may grant or refuse an application for exemption or impose conditions and it may alter or cancel any exemption or condition in an exemption.
- [3]** An exemption does not take effect before the applicant has undertaken in writing to comply with all conditions imposed under subsection [2]:

Provided that if an activity is commenced before such undertaking has been submitted to the Municipality, the exemption lapses.

- [4]** If any condition of an exemption is not complied with, the exemption lapses immediately.

[65] REPEAL OF BY-LAWS

- [1]** Any by-laws adopted by the Municipality or of a municipality now forming an administrative unit of the Municipality and relating to dogs or with regard to any matter regulated in these by-laws are hereby repealed.

- [2]** Anything done under the provisions of the by-laws repealed by subsection [1] is deemed to have been done under the corresponding provision of these by-laws and such repeal will not affect the validity of any approval, authority, waiver or other act which at the commencement of these by-laws is valid under the by-laws so repealed.