

ETHEKWINI MUNICIPALITY: CEMETERIES AND CREMATORIA BY-LAW, 2015



Adopted by Council on the:

Promulgated on:

CEMETERIES AND CREMATORIA BY-LAW, 2015

To provide for the establishment, control and maintenance of public and private cemeteries and crematoria within the area of jurisdiction of the eThekweni Municipality; to regulate the use and management of cemeteries and crematoria within the Municipality's area of jurisdiction; to provide for the repeal of laws and savings; and to provide for matters incidental thereto.

PREAMBLE

WHEREAS there is a need for the Municipality to control and regulate the establishment and use of cemeteries and crematoria within its area of jurisdiction;

WHEREAS the Municipality is the cemetery authority within the definition of section 1 of the KwaZulu-Natal Cemeteries and Crematoria Act, No. 12 of 1996 (as amended) and, as such, is empowered to establish and to operate cemeteries and crematoria, as well as to issue valid certificates of registration in respect of private cemeteries and crematoria within its area of jurisdiction;

AND WHEREAS the Municipality must strive to strike a balance between the protection of cultural rights and the protection of the environment in the operation of cemeteries and crematoria within its area of jurisdiction;

NOW THEREFORE the Municipal Council of the eThekweni Metropolitan Municipality, acting in terms of section 156 read with Schedule 5 (Part B) of the Constitution of the Republic of South Africa, and read with section 11 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), hereby makes the following By-law:

TABLE OF CONTENTS

**CHAPTER 1
INTERPRETATION**

1. Definitions
2. Interpretation of the By-law
3. Objects of By-law

**CHAPTER 2
APPLICATION**

4. Application of By-law

**CHAPTER 3
PRIVATE CEMETERIES AND CREMATORIA**

5. Establishment and use of private cemeteries and crematoria
6. Certificate of registration of a cemetery or crematorium
7. Application procedure
8. Publication of a notice of application
9. Discretion to grant or refuse an application
10. Duties of proprietors

**CHAPTER 4
PUBLIC CEMETERIES AND CREMATORIA**

11. Establishment and use of public cemeteries and crematoria
12. Operation of a public cemetery or crematorium
13. Management and control
14. Duties of the Supervisor
15. Admission hours
16. Booking for burial

CHAPTER 5

CONTROL AND REGULATION OF BURIALS

17. Conveyance of human remains to the cemetery
18. Interment not permitted without burial order
19. Exemption from liability
20. Vaults in cemeteries
21. Depth of graves
22. Number of burials and capacity of cemeteries
23. Opening and closing of graves
24. Exhumations
25. Fees and charges
26. Sale of right to use private graves
27. Re-opening of private graves and number of bodies in one grave
28. Type of coffin permitted
29. Payment of burial fee
30. Standard size of graves
31. Funeral ceremonies
32. Entrance to and exit from cemetery
33. Use of Vehicles in cemetery
34. Tampering with graves prohibited
35. Graves and memorial work to be kept clean and in good repair
36. Trees or plants on grave sites
37. Unsightly objects not allowed
38. Memorial work plans to be submitted
39. Erection of a headstone or tombstone
40. Clearing of sites after completion of work
41. Removal of memorial work
42. Replacement or re-erection of memorial work
43. Exclusion of memorial work
44. Lawned areas
45. Landscaped cemetery

CHAPTER 6
CONTROL AND REGULATION OF CREMATIONS

- 46. Booking for cremation
- 47. Hours of cremations
- 48. Control of funeral services
- 49. Coffin specifications
- 50. Coffin bearers to be provided
- 51. Access to furnace chamber
- 52. Committal ceremonies
- 53. Coffins not to be opened without authority
- 54. Deposit and preservation of ashes
- 55. Niches and memorial plaques
- 56. Ashes not to be removed without written consent
- 57. Refusal to approve memorial
- 58. Fees and charges
- 59. Disposal of paupers by cremation

CHAPTER 7
MISCELLANEOUS

- 60. Municipality not liable for damage
- 61. Prohibited acts
- 62. Delegations
- 63. Appeals
- 64. Offences and penalties
- 65. Repeal of laws and savings
- 66. Short title and commencement

SCHEDULE

LAWS REPEALED

CHAPTER 1 INTERPRETATION

Definitions

1. In this By-law, unless the context indicates otherwise—

"Act" means the KwaZulu-Natal Cemeteries and Crematoria Act, 1996 (Act No. 12 of 1996");

"authorised official" means a person authorised to implement the provisions of this By-law, including but not limited to—

(a) peace officers as contemplated in section 334 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

(b) municipal or metropolitan police officers as contemplated in the South African Police Services Act, 1995 (Act No. 68 of 1995); and

(c) such employees, agents, delegated nominees, representatives and service providers of the Municipality as are specifically authorised by the Municipality in this regard: Provided that for the purposes of search and seizure, where such person is not a peace officer, such person must be accompanied by a peace officer;

"Births and Deaths Registration Act" means the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992);

"burial" means burial in earth or any other environmentally friendly method of disposal of human remains, and **"disposal"** has a corresponding meaning;

"burial place" means any public, private or other place which is used for a burial;

"cemetery" means any place –

(a) where human remains are buried in an orderly, systematic and pre-planned manner in identifiable burial plots; and

(b) which is intended to be permanently set aside for and used only for the purposes of the burial of human remains;

"cemetery authority" means the eThekweni Municipality;

"competent officer of the law" means a judicial officer who is authorised by law to issue an order for the exhumation of a corpse;

"Constitution" means the Constitution of the Republic of South Africa, 1996;

"cremate" means to reduce any human remains to ashes and **"cremation"** has a corresponding meaning;

"crematorium" means any building or structure in respect of which authority has been granted for human remains to be cremated therein or thereon;

"exhumation" means the removal of human remains from the grave in which they are placed for burial;

"grantee" means a person to whom the right to use a private grave site for a determinate or indeterminate period has been granted or such person's heir or successor in title;

"grave" means an excavation in which human remains have been intentionally placed for the purpose of burial, but excludes any such excavation where all human remains have been removed;

"Head" means the Head of Parks, Recreation and Culture of the Municipality, and includes any person –

(a) acting in that position; or

(b) to whom the Head has delegated or sub-delegated a power, function or duty in accordance with the system of delegation developed by the Municipal Manager

in terms of section 59 of the Local Government: Municipal Systems Act, 2003 (Act No. 32 of 2000);

"Head of Health" means the person lawfully acting in the capacity of Head in the department responsible for Health in the eThekweni Municipality or a duly authorised representative;

"human remains" means any human corpse or any tissue or bone which is identifiable as having formed part of a human corpse, but does not include the ashes remaining after a human corpse has been cremated;

"landscaped cemetery" means a park-like cemetery in which the erection of upright headstones is not permitted;

"lawned area" means an area set aside by the Head from time to time in any portion of a cemetery as determined by the Head where no memorial work of any nature whatsoever is permitted on a single grave site or plot other than a headstone;

"leased grave" means any piece of land within a public cemetery laid out or demarcated as a single grave, in respect of which any person has purchased the exclusive right to use over a stipulated period, for burial purposes in terms of this By-law;

"lessee" means the person, who has purchased the exclusive right to use a specified gravesite or plot for the period of the lease;

"memorial work" means any tombstone, railing, fence, monument, tablet, memorial inscription, kerbing or other work erected or which may be erected on any grave or plot;

"municipal council" or **"council"** means the eThekweni Municipal Council, a municipal council referred to in section 157(1) of the Constitution;

"Municipality" means the eThekweni Municipality, a category A municipality as envisaged in terms of section 155(1) of the Constitution and established in terms of PN343 of 2000 (KZN);

"municipal manager" means a person appointed in terms of section 54A of the Municipal Systems Act as the head of administration of the municipal council;

"pauper burial" means the burial of any person by the Municipality through an undertaker contracted by the Municipality for that purpose due to the identity or the next of kin of such person being unknown to the Municipality, and **"pauper"** has a corresponding meaning;

"person" means a natural or juristic person, excluding a local council or tribal authority as defined in section 1 of the Act;

"plot" means any two or more graves for family burials in respect of which any person has purchased the exclusive right over a stated period to use the same for burial purposes in terms of this By-law;

"private cemetery" means a cemetery established or deemed to be established in terms of the Act and which is maintained by or on behalf of any person, either natural or juristic, for –

- (a) commercial purposes;
- (b) persons of the same religious belief, denomination or sect, principally if not solely, for the burial therein of deceased persons of such belief, denomination or sect; or
- (c) burial therein of deceased members of the family or deceased employees of the person who established such cemetery and is responsible for the maintenance thereof;

"proprietor" in relation to a private cemetery, means any person or any association of persons, whether incorporated or not, responsible for the administration and maintenance of a private cemetery, and includes any trustee or trustees acting on behalf of any such person or association of persons;

“public cemetery” means any cemetery owned, established , maintained by or legally vested in the Municipality;

“public grave” means any grave in a public cemetery in respect of which any person has purchased or may purchase the right of having a single body interred without obtaining any exclusive right to such grave;

"Regulations" means the Cemeteries and Crematoria Regulations in terms of Act No. 12 of 1996, published in Proclamation No. 130 of 1997;

"Supervisor" means –

(a) in the case of a cemetery owned and controlled by the Municipality, the person appointed by the Municipality to manage the same under the control and direction of the authorised official; and

(b) in the case of a private cemetery, the person appointed by the proprietor thereof to manage the same and keep the records thereof;

"Systems Act" means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

"tribal authority" means a tribal authority as defined in section 1 of the Act; and

"undertaker" means any person whose business is to carry out arrangements for the burial of corpses.

Interpretation of the By-law

2. If there is a conflict of interpretation between the English version of this By-law and a translated version, the English version prevails.

Objects of By-law

3. The objects of this By-law are to –

- (a) consolidate and amend the By-laws which were applicable in the former substructures of the Municipality relating to the establishment, control, management, maintenance and regulation of cemeteries and crematoria; and
- (b) provide for matters connected therewith.

CHAPTER 2 APPLICATION

Application of By-law

4.(1) This By-law applies to the area of jurisdiction of the Municipality, excluding any area within the boundaries of the Municipality which falls under the jurisdiction of a tribal authority, in respect of any—

- (a) cemetery; and
- (b) crematorium,

established by the Municipality or any person in terms of the Act.

(2) Notwithstanding the provisions of subsection (1), the application of this By-law may be extended by consent to any area within the boundaries of the Municipality which falls under the jurisdiction of a tribal authority.

CHAPTER 3 PRIVATE CEMETERIES AND CREMATORIA

Establishment and use of private cemeteries and crematoria

5. Subject to the provisions of section 7, a person may, in the manner prescribed in this By-law, establish and operate one or more cemeteries or crematoria.

Certificate of registration of a cemetery or crematorium

6.(1) A cemetery or crematorium established in terms of section 5 may be operated by any person, including such person's employees, servants, agents, contractors or successors in title in whose name a certificate of registration has been issued by the Municipality in terms of section 14 of the Act.

(2) A registration certificate contemplated in subsection (1) may be issued by the Municipality with or without conditions.

(3) Any registration certificate which was validly issued by a competent authority in terms of any other law prior to this By-law taking effect, and which has not been withdrawn or cancelled, shall be deemed to have been issued in terms of this By-law.

(4) Notwithstanding the provisions of subsection (1), a person may cause to be registered an informal cemetery which has been in existence prior to the Act coming into effect and, once registered, the provisions of this By-law will become applicable to the informal cemetery concerned as if it was duly established in terms of this By-law.

Application procedure.

7. An application by a person for approval to establish or extend a cemetery or crematorium must be made in writing addressed to the authorised official, and must be accompanied by—

(a) a locality plan to a scale of not less than 1 in 10 000, showing—

(i) the position of the proposed cemetery or existing cemetery in relation to the boundaries of the land upon which it is proposed to establish it or upon which it is situated, as the case may be;

(ii) the full registered property description of the land upon which the cemetery is to be established or extended, showing all streets, public places and privately-owned property within a distance of 100 metres of the site;

(iii) the name of the registered owner or owners of such property; and

(iv) all public roads, streets, thoroughfare or public places within or adjoining such property;

(b) a block plan of the cemetery and, where applicable, the proposed extension to the cemetery, 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) the full name of the person or body who will operate such cemetery;

(d) a certificate that the establishment or extension of the cemetery will not constitute an actual or potential source of atmospheric or water pollution or any other health hazard: Provided that the authorised official may refuse to accept a certificate which has been given by a person or body who, in his or her opinion, is not sufficiently qualified to issue such a certificate;

(e) a plan and sections to a scale of at least 1 in 100 of any building existing or proposed to be erected, and which shall in this case conform with the Building and Sewerage By-laws of the eThekweni Municipality;

(f) a list of registers or records kept or proposed to be kept with reference to identification of graves, sale or transfer of grave sites and interments;

(g) the full name and address of the proprietor;

(h) the nature of the title under which the proprietor will hold or holds the land on which the cemetery is to be established or which is being used as a cemetery, and whether such land is subject to any mortgage or trust; and

(i) a schedule of the burial fees proposed to be charged or actually in force.

Publication of a notice of application

8. Once an application for approval has been lodged in terms of section 7, the applicant must cause to be published in one or more newspapers circulating in the Municipality's area of jurisdiction a notice stating the nature of the application and specifying the date, being not less than 14 days after the date of publication of such notice, by which objections to the granting of such application may be lodged with the authorised official.

Discretion to grant or refuse an application

9(1) The Municipality may grant or refuse an application for the establishment of a proposed private cemetery or crematorium, or the continued use thereof.

(2) In evaluating an application the Municipality must consider the following—

(a) any objections received;

(b) any disturbance to public amenity or any nuisance or danger to public health which is likely to take place or arise as a result of the establishment of the proposed cemetery or crematorium; and

(c) any other relevant factors that the Municipality deems necessary for the purposes of evaluating an application.

(3) Such approval may be subject to any variation, amendment or conditions which the Municipality may deem appropriate to impose.

(4) A deviation or departure from the plans as approved in terms of subsection (1) is not permitted without the prior approval of the authorised official.

Duties of proprietors

10. Every proprietor of a private cemetery or crematorium, the establishment or continued use of which has been authorised by the Municipality, must—

(a) comply with any special conditions prescribed by the Municipality;

(b) keep or cause to be kept a record or records showing—

(i) the number of each grave site and the ownership thereof; and

(ii) the number of interments in each grave site and the name, age, sex, race, last known address, date and cause of death in each case;

(c) comply with the relevant provisions of the Act and any Regulations made thereunder;

(d) maintain all grounds, fences, gates, roads, paths and drains in good order and condition and clear off weeds and overgrowth;

(e) provide for the identification of grave sites by subdividing the cemetery into blocks each containing a number of graves or grave sites and each block being demarcated by means of signs showing the number and situation of each block;

(f) separately number the graves or grave sites in each block by means of durable number plates;

(g) maintain all signs and number plates in a neat and legible condition;

(h) allow authorised officials to enter or inspect the cemetery and all records kept in connection therewith;

- (i) render a monthly return to the authorised official on or before the 7th day in each month of all burials detailing the name, last known address, age, sex, race, date and cause of death in each case, and the name of the medical practitioner who issued the certificate of death, the authority who issued the burial order, the block and grave site number and the date of burial;
- (j) render an annual return to the authorised official on or before the 31st day of March each year containing a detailed list of the names and addresses of all trustees, committee members or persons controlling the cemetery or cemeteries concerned;
- (k) appoint a Supervisor to manage the cemetery and to keep the records thereof; and
- (l) notify the authorized official of any new appointment or change in the identity of the Supervisor on the monthly return rendered in terms of paragraph (j).

CHAPTER 4 PUBLIC CEMETERIES AND CREMATORIA

Establishment and use of public cemeteries and crematoria

11. The Municipality may, in the manner prescribed in the Regulations, establish and operate such number of cemeteries and crematoria as it may deem appropriate within or outside its area of jurisdiction.

Operation of a public cemetery or crematorium

12. A cemetery or crematorium established by the Municipality in terms of section 11 may be operated by the Municipality through any one or more of its employees, agents or contractors.

Management and control

13.(1) Every public cemetery or crematorium vesting in, owned or controlled by the Municipality must be managed by a Supervisor under the control and direction of the authorised official in accordance with this By-law.

(2) In the event of a Supervisor having not been appointed or if the appointed Supervisor is unable for any reason to carry out his duties, the authorised official or his duly authorised representative must be the Supervisor in terms of this By-law for the time being.

Duties of the Supervisor

14.(1) In order to ensure proper management and effective control of a public cemetery or crematorium, the Supervisor must—

- (a) ensure that the Supervisor's office is open to the public between the office hours as determined by the Municipality from time to time;
- (b) keep and maintain an accurate register of all burial and cremations in such cemetery or crematorium, which register must be kept open for inspection by members of the public during office hours; and
- (c) keep a plan or diagram of the cemetery, which must be kept open for public inspection during office hours, showing—
 - (i) the area and situation of all grave sites and plots separately numbered and marked; and
 - (ii) each single grave site included in any one plot separately indicated and marked.

(2) In the event of a dispute, the information recorded on the plan or diagram referred to in subsection (1) as to the area, situation, number or identity of any grave or plot shall be conclusive.

(3) The Supervisor may level any grave as and when it is deemed necessary to do so for the purposes of land management.

Admission hours

15.(1) All public cemeteries and crematoria must be open to the public at a time determined by the Municipality.

(2) Subject to subsection (1), a person may not enter or be in a public cemetery or crematorium at any other time unless—

- (a) authorised by the Supervisor; or
- (b) attending a burial authorised in terms of this By-law to take place outside the official opening hours.

Booking for burial

16.(1) A person who wants to make a booking for a burial must make a request to that effect either in person or through an authorised representative at the nearest Municipal office designated by the authorised official for that purpose.

(2) Subject to subsection (4), a booking for burial must be made at least six business hours prior to the time of the burial, and if the booking is made on the same date as the date on which the burial is supposed to take place, such booking must be made not later than 10:00am on that date;

(3) Notwithstanding the provisions of subsection (2), the authorised official may, in his or her sole discretion, charge—

- (a) a late burial fee in respect of any burial which is scheduled to take place and extends beyond the normal operating hours of the cemetery due to any reason; or
- (b) a special late burial fee in respect of any booking made after 10:00am on the same date as the date on which the burial concerned is scheduled to take place.

(4) All burials must take place between the hours of 09:00am and 3:00pm daily, unless the authorised official grants approval on good cause shown for burial to take place outside the normal burial hours.

CHAPTER 5 CONTROL AND REGULATION OF BURIALS

Conveyance of human remains to the cemetery

17. Any person conveying human remains or having charge of human remains being conveyed to any cemetery must convey the same in an orderly and proper manner and in a proper coffin or other decent and sufficient covering material.

Interment not permitted without burial order

18. An interment is not permitted in any cemetery except upon producing to the Supervisor a burial order issued in terms of the Regulations, save in cases where otherwise provided for in the Births and Deaths Registration Act.

Exemption from liability

19. The Municipality is not liable to any person for any loss or damage resulting from or arising out of or in any way connected with the use of a cemetery or the condition of the soil or land on which a cemetery is established.

Vaults in cemeteries

20.(1) Except for vaults which existed prior to the promulgation of this By-law, the use and maintenance of which must be carried out as set out in subsection (2), the building of vaults in cemeteries is not allowed.

(2) Subject to subsection (1), any person who in any part of a cemetery has caused a vault to be built for use as a burial place must, at such person's own cost, ensure that such vault remains enclosed with walls constructed of good brick or stone properly bonded and solidly put together with good cement mortar, or other materials approved by the authorised official.

(3) Any person who in any part of a cemetery buries human remains in an existing vault must at such person's own cost open such vault and after the deposit of the coffin containing such remains must, unless the coffin is hermetically sealed immediately, cause the coffin to be wholly and permanently enclosed in a separate cell or receptacle which must be constructed of good brickwork or other suitable material properly jointed in cement and in such a manner as to prevent, as far as practicable, the escape of noxious gas from the interior of the cell or receptacle which must be left permanently undisturbed.

Depth of graves

21.(1) A grave must not be less than 1.80 m in depth and human remains interred therein must not be nearer than 1.25 m to the surface of the ground.

(2) Notwithstanding the provisions of subsection (1), the authorised official may determine the depth of a grave to be greater than 1.80 m.

Number of burials and capacity of cemeteries

22.(1) Notwithstanding anything to the contrary contained in this By-law, the Municipality is entitled to determine the—

- (a) number of burials per week in a cemetery; and
- (b) burial capacity of a cemetery,

taking into account such factors as the Municipality may, in its discretion, consider relevant and necessary.

Opening and closing of graves

23. The Supervisor must arrange for the opening and closing of all graves and a person may not open, re-open or close a grave or assist in doing so except with the Supervisor's consent and, where practicably possible, under the Supervisor's supervision.

Exhumations

24.(1) A person may not exhume any human remains without the consent of the authorised official, except where the human remains are to be exhumed for the purpose of any judicial or other enquiry upon an order of a competent officer of the law: Provided that the authorised official must only give his or her consent on the production to him or her of a certificate from the Head of Health that he or she is satisfied that the opening of the grave and the exhumation can be carried out without danger to public health.

(2) During the exhumation the Supervisor must cause the block in which the grave is situated to be closed to the public. Any person who disobeys any sign or instruction erected or given by the Supervisor in terms of this section forbidding entry on the block is guilty of an offence.

(3) The grave from which any human remains are to be removed must be effectively screened from public view during the exhumation and a shell must be kept in readiness at the grave.

(4) Whenever giving his or her consent in terms of subsection (1), the authorised official must stipulate the hours during which such exhumation may take place.

(5) Subject to the provisions of this section, the exhumation must be carried out in accordance with the provisions of Chapter III of the Act.

Fees and charges

25.(1) The fees payable to the Municipality for interments, grave sites and plots, and for other services and facilities supplied by the Municipality are as prescribed by the Municipality in the Tariff By-law.

(2) All such fees and charges, unless previously paid, as may be due must be paid at the time an application for burial is made.

(3) Undertakers and managers or officials of public institutions approved by the Municipality may make special arrangements for payment of such fees and charges monthly. Where any such institution enters into an arrangement to pay such fees and charges monthly, the Municipality's Chief Financial Officer may require such institution to provide a written guarantee from a registered bank or insurance company, in a form to the satisfaction of the Chief Financial Officer, for an amount equivalent to the estimated value of burial fees which are likely to be incurred over a period of two months.

(4) Notwithstanding the provisions of subsections (1) and (7) of section 26 of this By-law, the rights acquired by any person under a lease with the Municipality and the tariff relating to

fees and charges in respect of such lease applicable prior to this By-law coming into effect must be preserved.

(5) Pauper burials and the burial of persons whose immediate families qualify as indigent in terms of the criteria adopted by the Municipality are exempt from payment of any fees or charges referred to in this section.

Sale of right to use private graves

26.(1) The Municipality may, in its discretion, grant to any person for a period of 10 years the exclusive right of such person's next of kin to remain interred in a single grave site. Where such right is granted for a period of 10 years, the lessee or his or her heirs or successors in title are entitled to renew the same in terms of subsection (7) hereof for a further period of 10 years.

(2) Any person desiring to acquire the right to use a private grave as contemplated in subsection (1) must apply in writing to the authorised official and the appropriate charge prescribed in the tariff of charges must accompany the application.

(3) The allotment of a private grave must be recorded in a register and a certificate must be issued in the prescribed form by the Municipality to the applicant. In the event of the said certificate being lost or mislaid, a written confirmation of title to a private grave may be obtained from the authorised official on payment of the appropriate fee prescribed in the tariff of charges. If the application is not granted, the authorised official must return to the applicant the amount deposited. Such private grave must then be held subject to the Cemeteries and Crematoria By-law from time to time in force.

(4) The right to use a private grave must not be transferred without the approval of the authorised official: Provided that any person dissatisfied with any decision of the authorised official may lodge an appeal against such decision to the municipal manager in terms of section 62 of the Systems Act.

(5) An application to transfer an existing right to use a private grave must be made by the holder of the certificate or his or her lawful representative and must be accompanied by the

prescribed transfer fee. The certificate must be attached to the application and the full name and address of the transferee must be shown.

(6) The transfer of an existing right referred to in subsection (5) must be registered by the authorised official, failing which such transfer will not be regarded as valid. In the event of an existing right to use a private grave or plot being transferred back to the Municipality, the original purchase price must be refunded and no transfer fee is payable in respect thereof.

(7) Any lessee desiring to renew any certificate issued in terms of this By-law or its predecessors may do so on expiry of the initial period of 10 years, and on payment of an amount equal to that paid on acquisition of the right to use the grave or plot or such other amount as may be prescribed in the tariff of charges applicable at the time of such renewal. Applications must be made in writing before the expiry of the initial period of 10 years, and the certificate must be produced to the authorised official, who must endorse the renewal thereon.

(8) All private graves must be used and maintained in conformity with the provisions of this By-law as amended from time to time.

(9) In the event of failure by a lessee to renew a certificate in terms of subsection (7) the Municipality may at any time repossess and use the private grave site or plot to which that certificate related.

(10) The Municipality may, at any time after the expiry of 10 years, issue a notice to repossess the right to use a private grave site or plot in perpetuity, where the grantee has failed to comply with the requirements set out in section 35 of this By-law.

(11) Where the whereabouts of the grantee are unknown and cannot, with the exercise of reasonable diligence be ascertained, and before exercising the power to repossess in terms of subsection (10), the Municipality must publish in—

- (a) a newspaper circulating within the Municipality's area of jurisdiction; and
- (b) at least two official languages,

a notice of its intention to repossess such private grave site or plot upon the expiry of three months from the date of such notice.

(12) Where a grave site or plot in any public cemetery is required for public or municipal purposes, the authorised official may allocate another grave site or plot in the same cemetery or in any other public cemetery to the grantee or lessee concerned, in exchange for the grave site or plot required for public or municipal purposes.

Re-opening of private graves and number of bodies in one grave

27.(1) The consent of the person who is the registered holder of a certificate for the use of a private grave or plot or of his lawful representative must be produced to the Supervisor prior to any private grave being reopened for fresh interment.

(2) To avoid undue opening of a grave and the placing of an undesirable number of bodies therein, the Supervisor must decide how many interments may be made in one grave.

Type of coffin permitted

28.(1) A person may not place or cause to be placed in any public grave, private grave or plot in any cemetery a coffin constructed of any material other than biodegradable material which is environmental friendly.

(2) The provisions of subsection (1) must not be interpreted to prevent the use of other burial methods which utilise biodegradable environmentally friendly materials, including but not limited to a cloth and/or a shroud.

Payment of burial fee

29.(1) Any person who desires to have a body interred in a public grave must pay the burial fee prescribed in the tariff of charges. Such fee entitles the person concerned to a single interment only, and the allocation of the grave must be determined by the Supervisor in his or her sole discretion.

(2) Where the prescribed charge for the use of a public grave has been paid by or on behalf of any person, the representatives of such person may be permitted within six months after

the date of the burial to acquire such grave as a private grave upon payment of the charge prescribed for the purchase of the right to use a private grave.

(3) Notwithstanding the provisions of subsection (1), no burial fee is payable in respect of any pauper burial or the burial of any person whose family or immediate next of kin qualify as indigent in terms of the applicable criteria adopted by the Municipality from time to time.

(4) The burials referred to in subsection (3) must be undertaken by the funeral undertaker contracted to the Municipality following the normal tendering process of the Municipality.

Standard size of graves

30. The standard size of all single grave sites in a public cemetery is 2.40 m by 1.10 m: Provided that the provisions of this section do not apply to grave sites in any public cemetery which were laid out prior to 1956 and which are shown on the final plan of such cemetery to be of a greater or lesser size than that prescribed by this section.

Funeral ceremonies

31.(1) The person having charge of a funeral must make all arrangements for the carrying out at such funeral of the requisite religious ceremony or rites.

(2) A person may not conduct a religious ceremony or service according to the rites of any denomination in such portion of a cemetery as may be set apart for members of other denominations.

Entrance to and exit from cemetery

32. A person must enter or leave the cemetery only through the gates or entrances constructed and provided by the Municipality for that purpose.

Use of Vehicles in Cemetery

33.(1) A person must not, without the permission of the Supervisor, take into the cemetery any car, cart, carriage or other vehicle, unless such vehicle is required for the conveyance of—

- (a) the human remains;
- (b) mourners and persons concerned with the conduct of a funeral;
- (c) memorial work;
- (d) persons visiting and maintaining grave sites; or
- (e) any other persons or materials which the authorised official may permit.

(2) A person must not take into the cemetery any car, cart, carriage or other vehicle where its gross mass is in excess of 6 000 kg.

(3) All vehicles lawfully within the cemetery must proceed at a speed not exceeding 15 km/h therein, and it is prohibited for any vehicle to pass in close proximity to any point where a funeral service is being conducted.

Tampering with graves prohibited

34. A person must not in any way tamper or interfere with any grave, memorial work, official sign or other erection in a cemetery, save insofar as may be necessary in connection with any work which such person has been authorised to do in terms of this By-law.

Graves and memorial work to be kept clean and in good repair

35.(1) The lessee or grantee of a specified grave or plot must keep such grave or plot—

- (a) free from weeds;
- (b) in proper order;
- (c) clean; and
- (d) in a proper state of repair.

(2) If any such lessee or grantee neglects to attend to any grave or memorial work erected thereon, the Municipality may issue a notice calling upon him or her, within a stipulated period, to—

- (a) maintain such grave in proper order; or

(b) repair, renovate or remove any memorial work which is in a dilapidated, ruinous or unsightly condition.

(3) If the whereabouts of the lessee or grantee are unknown to the Municipality or if the lessee or grantee fails to execute the necessary work, within the period stipulated in the aforesaid notice referred to in subsection (2), the Municipality may itself carry out such maintenance, repair, renovation or removal as it may consider necessary and recover the cost thereof from the lessee or grantee.

(4) Grass, weeds or other material cleaned off a grave must not be deposited or thrown onto an adjoining grave or any other grave or plot or onto any road, path or vacant land, but must be either removed from the cemetery or placed into receptacles or containers provided for that purpose.

(5) The lessee or grantee of a private grave or plot in any public cemetery is deemed in terms of this subsection to have indemnified the Municipality, the authorised official and all municipal employees in respect of any damage howsoever caused to or theft of any memorial work erected or which may be erected on any private grave or plot and to have absolved them from any liability for such damage or theft.

Trees or plants on grave sites

36. A person may not, without the consent of the Supervisor, plant on any gravesite in the cemetery, whether such grave site be occupied or not, any tree or shrub or any species of plant capable of holding water in which mosquitoes can breed. The Supervisor may at the lessee's expense prune, cut down or dig up and remove any shrub, plant or flower at any time if in the authorised official's opinion the same has become unsightly or overgrown or is causing a nuisance, damage to an adjoining grave, or when it is necessary for the purpose of allowing the grave to be used again.

Unsightly objects not allowed

37. A person may not keep or allow to remain on any grave site in the cemetery, whether occupied or unoccupied, any tins, bottles, old crockery or other unsightly objects, and the Supervisor is authorised to remove any such objects, as well as any broken, dilapidated or unsightly wreaths, vases or receptacles.

Memorial work plans to be submitted

38. A person who wishes to erect, alter or add to any memorial work in the cemetery must first submit to the authorised official the plans of such work, together with any inscriptions to be made thereon, and if the authorised official grants his or her approval thereof, he or she must issue written permission in a form prescribed by the Municipality for that purpose, subject to payment by the person concerned of the appropriate fee prescribed in the tariff of charges, and the erection of such memorial work must be carried out under the direction of the authorised official.

Erection of a headstone or tombstone

39.(1) The type of memorial work allowed for erection in a cemetery is a headstone or tombstone, the erection of which must be in accordance with the specifications and guidelines determined by the Municipality from time to time.

(2) Any person desiring to erect a headstone or tombstone at a grave site must make a request in person or through an authorised representative to the booking clerk at the regional centre or designated municipal office nearest to the cemetery in question, and present to the booking clerk such documents as may be required by the Municipality for that purpose, including—

- (a) the applicant's original identity document or passport;
- (b) proof of exclusive right of use for a particular grave, such as a certified copy of receipt or certificate of ownership; and
- (c) a sketch plan for stone work.

(3) Subject to payment of a prescribed fee in respect thereof, a headstone or tombstone must be erected in accordance with the sketch plan submitted by the applicant to the booking

clerk in terms of subsection (2), which must comply with the specifications and guidelines determined by the Municipality in terms of subsection (1).

(4) Any person who erects a headstone or tombstone in contravention of subsection (2) or who, in erecting such stone, encroaches upon a road, path or adjoining ground or grave must, upon being required in writing to do so by the authorised official, comply with subsection (2) or remove such encroachment.

(5) Upon failure to remove such encroachment in the time specified in the notice, the Municipality may remove the whole of the work and claim the total cost incurred from the person concerned.

(6) All memorial work to be erected in the cemetery must as far as possible be brought into the cemetery in a state prepared and ready for fitting.

(7) Under no circumstances must any portion of the cemetery be used for the purpose of manufacturing any headstones or tombstones without the consent of the authorised official, who may in his or her discretion on application grant facilities in unused portions of the cemetery for such purposes.

(8) Any person intending to carry out any such work in terms of subsection (7) in the cemetery must, before commencing work, report his or her intentions to do so to the Supervisor.

(9) A headstone or tombstone or any other fixture of any kind must not be placed on a public grave.

Clearing of sites after completion of work

40. In the erection of memorial work, building or any other work of a similar nature in the cemetery the person engaged in such work must, on the completion thereof, clear up the ground or grave on which he was employed and leave the same clean and tidy.

Removal of memorial work

41. A person may not remove from the cemetery any memorial work, unless such person obtains prior consent of the authorised official in writing upon written application submitted by such person on the form prescribed by the Municipality for that purpose.

Replacement or re-erection of memorial work

42. The grantee or lessee of any private grave site or plot in the cemetery or the accredited representative of the grantee or lessee who requires any memorial work or any other erection to be removed, to permit a burial or for any other purpose, must apply to the authorised official for his or her consent to do so and must, if called upon to do so, cause all such erections so removed to be replaced or re-erected on the site within a period of two months of the date of such removal.

Exclusion of memorial work

43. The authorised official may prohibit the erection of any headstone upon any grave which is of inferior quality or workmanship or which is likely in any way to disfigure the cemetery.

Lawned areas

44.(1) The authorised official may set aside a portion of a cemetery for use as a lawned area.

(2) The maximum dimensions for a headstone shall be—

- (a) restricted to 450 mm in height above ground level;
- (b) 600 mm in width; and
- (c) 200 mm in thickness at the base.

(3) The maximum dimensions of a vase shall be—

- (a) restricted to 225 mm in height above ground level;
- (b) 200 mm in width; and
- (c) 200 mm in thickness at the base.

(4) Where the vase or vases are incorporated into an extension of the base of the headstone,

the maximum dimensions of the extended base of the headstone shall be—

- (a) restricted to 125 mm in height above ground level;
- (b) 950 mm in width; and
- (c) 200mm in thickness.

(5) An area not extending further than 400 mm in front of the headstone may be set aside as a garden area.

(6) Once an area is set aside for use as a lawned area, no person is allowed to introduce into that area any memorial work other than a headstone, garden or vase as described above in subsections (2), (3) and (4).

Landscaped cemetery

45. The erection of an upright headstone is not allowed in any cemetery which is designated a landscaped cemetery by the Municipality.

CHAPTER 6

CONTROL AND REGULATION OF CREMATIONS

Booking for cremation

46.(1) Any person who wishes to make a booking for a cremation must make a request in person at his or her closest regional centre, and must present to the regional centre concerned such documents as may be required by the Municipality from time to time as part of the application process.

(2) The request for cremation must be made at least two hours before the time applied for, and not less than two hours before the closing time for the cremation.

(3) If two or more requests are made for cremation at the same time and at the same crematorium, the authorised official must decide the order in which the cremations shall take place.

Hours of cremations

47.(1) Cremations at any crematorium must be carried out on such days of the week and during such times as may be determined by the Municipality from time to time, which must be clearly and conspicuously displayed at the entrance to the crematorium.

(2) The first cremation must be carried out at least one hour after the opening time for the cremation and the last cremation at least two hour before the closing time: Provided that the authorised official may on good cause shown authorise a cremation to take place outside the normal operation hours for the cremation concerned.

Control of funeral services

48.(1) Every service, ceremony or funeral in connection with a cremation is subject to the general control of the authorised official while within the cemetery, and a person attending any such service, ceremony or funeral must not willfully disregard a lawful and reasonable order of the authorised official while within the cemetery.

(2) The authorised official may exclude any person whose presence, in his or her discretion, is likely to cause pain or annoyance to other persons attending the ceremony, and to remove any person who refuses to comply with any order or direction given in the exercise of the powers granted under this By-law.

Coffin specifications

49.(1) A person presenting a dead body for cremation in terms of this By-law must ensure that such body is enclosed in a coffin constructed in accordance with the specifications stipulated in subsection (2) and in such a way that it is not offensive or objectionable, failing which the authorised official may refuse to authorise the cremation of such body.

(2) The coffin referred to in subsection (1) must comply with such specifications as may be stipulated by the Municipality from time to time, including the following:

- (a) it must not exceed 2,2m in length by 0,85m in width and 0,5m in depth, and must be made of some readily combustible wood, such as deal, white pine or three-ply wood, without the use of any metal nails;
- (b) it may be polished and may have the usual furniture finish, but the handles and name-plates (if any), unless made of some readily combustible material, must be so fixed as to be easily removed;
- (c) pitch and sawdust must not be present in any form;
- (d) there must be no cross-pieces or projections of any kind under the sole or on the bottom of the coffin and all wooden pegs on this part of it must be carefully countersunk; and
- (e) if necessary, a thick zinc lining may be inserted in a coffin, but no metal other than zinc must be used.

(3) The authorised official is entitled to refuse to proceed with the cremation of any remains where the coffin containing the remains does not comply with the specifications stipulated in subsection (2).

(4) Nothing in this By-law prevents the use of a suitable outer coffin of any material to enclose an inner coffin complying with the requirements specified in this section, provided the consent in writing of an executor, relative or other like person responsible for payment of the funeral expenses of the deceased to such use is deposited with the authorised official, which consent must also state that such person knows that such outer coffin is not to be incinerated and agrees to it being returned to the supplier thereof.

(5) The outer coffin referred to in subsection (4) must be removed from the crematorium premises immediately after the cremation.

Coffin bearers to be provided

50. An adequate number of bearers must be provided by the representative of the deceased for the purpose of carrying the coffin into the chapel and depositing it on the catafalque. An employee of the Municipality is not obliged to perform these functions.

Access to furnace chamber

51. No person other than authorised officials are allowed into the furnace chamber at any time, unless special permission has been granted in writing by the Municipality.

Committal ceremonies

52. Subject to the direction of the authorised official, committal ceremonies may be held in the crematoria, excluding the furnace chambers.

Coffins not to be opened without authority

53. A dead body must not be removed from a coffin for the purpose of incineration and a coffin must not be opened in the crematorium except when required by the authorised official or as permitted in terms of any provision of this By-law.

Deposit and preservation of ashes

54. The Municipality may provide buildings, walls of remembrance, niches or other facilities for the deposit and preservation of the ashes of cremated bodies for definite periods.

Niches and memorial plaques

55.(1) Niches and plaques may only be purchased for immediate use and must be allocated in sequence upon application to the authorised official.

(2) Niches must be purchased for a period not exceeding 10 years, and the matter placed in or on such niches and spaces for memorial plaques and all inscriptions are subject to the approval of the authorised official.

(3) The inscription on a plaque must be arranged by and be to the account of the purchaser, and the use of iron or other metal liable to rust in connection with any niches or memorial is prohibited.

Ashes not to be removed without written consent

56.(1) An urn or casket containing ashes once deposited with the Municipality must not be removed without the prior written consent of the Municipality being obtained.

(2) Any ashes unclaimed within a reasonable period as determined by by the authorised official, may be disposed of in such manner or such method as the authorised official considers appropriate, and neither the Municipality nor the authorised official can be held liable for wrongful disposal of such ashes.

Refusal to approve memorial

57. The Municipality reserves the right to refuse to approve any memorial which, in its opinion, is of inferior workmanship or quality or which is likely in any way to disfigure the crematorium or its grounds.

Fees and charges

58. Subject to the provisions of section 59, the fees for cremations and charges relating to memorials must be in accordance with the tariffs and charges published by the Municipality from time to time.

Disposal of paupers by cremation

59. Where a deceased person is reasonably believed by the Municipality or the authorised official to be a pauper by reason of such person's identity or next of kin being unknown, the Municipality may, in its discretion, decide to dispose of such person by cremation, in which case the payment of fees and charges referred to in section 58 must be waived.

Exclusion of liability

- 60.** Neither the Municipality nor any of its officials or employees can be held liable for any—
- (a) damage which may at any time occur to any memorial from any cause whatsoever;
 - (b) leveling of graves as and when it is deemed necessary by the Municipality for the purposes of land management;
 - (c) wrongful cremation of the corpse of any person who is reasonably believed by the Municipality or the authorised official to be a pauper; or
 - (d) mechanical failure that may occur.

Prohibited acts

- 61.** A person may not—
- (a) in any part of the cemetery or crematorium, willfully or negligently damage, destroy or disfigure any fence, tree, plant, seat, road, grave, tablet, inscription, monument or gravestone;
 - (b) remove from the cemetery or crematorium any soil, sand, artifact or other similar substance or thing without the permission of the Supervisor;
 - (c) play in the cemetery or crematorium any game or throw any stone, stick, or other missile, or discharge any firearm (except when forming part of a firing party at a Military Funeral) or any air-gun, catapult or other similar instrument;
 - (d) take any animal into the cemetery, except a guide dog;
 - (e) distribute any card or pamphlet of any description or solicit orders;
 - (f) cause any disturbance in the cemetery or crematorium or commit any unseemly act or nuisance;
 - (g) interfere with any person or do any act or thing tending to provoke a breach of the peace or to the hurt or annoyance of persons lawfully using or visiting the cemetery or crematorium; or
 - (h) play loud music or cause any disturbance or any other act which may be Considered by the authorised official to constitute a nuisance.

Delegations

62.(1) Subject to the Constitution and applicable national and provincial laws, any—

- (a) power, excluding a power referred to in section 160(2) of the Constitution;
- (b) function; or
- (c) duty,

conferred, in terms of this By-law, upon the Council, or on any of the Municipality's other political structures, political office bearers, councillors or staff members, may be delegated or sub-delegated by such political structure, political office bearer, councillor or staff member, to an entity within, or a staff member employed by, the Municipality.

(2) The delegation in terms of subsection (1) must be effected in accordance with the system of delegation adopted by the Council in accordance with section 59(1) of the Systems Act, subject to the criteria set out in section 50(2) of the said Act.

(3) Any delegation contemplated in this section must be recorded in the Register of Delegations, which must contain information on the—

- (a) entity or person issuing the delegation or sub-delegation;
- (b) recipient of the delegation or sub-delegation; and
- (c) conditions attached to the delegation or sub-delegation;

Appeals

63.(1) A person whose rights are affected by a decision taken by the Municipality in terms of this By-law may appeal against the decision in terms of the Appeals provision contained in the Systems Act 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.

(3) The appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable period.

(4) The appeal authority must confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights which may have accrued as a result of the decision.

(5) The appeal authority must furnish written reasons for its decision on all appeal matters.

(6) All appeals lodged are done so in terms of the Systems Act and not in terms of this By-law.

(7) Where a conviction has been affirmed by a court of law and the accused wishes to appeal such conviction, the appeal must take place in terms of the court's appeal process and not in terms of subsections (1) to (5).

Offences and penalties

64. Any person who—

- (a) contravenes or fails to comply with any provision of this By-law;
- (b) fails to comply with any lawful order or instruction issued by the Supervisor or authorised official in terms of this By-law; or
- (c) obstructs or hinders the Supervisor or authorised official in the execution of his or her duties under this By-law,

is guilty of an offence and liable on conviction to a fine not exceeding R500.00 in the case of first conviction or, in the case of second or subsequent conviction for the same offence, a fine not exceeding R2,000.00 or, in default of payment of any fine imposed in either case, to imprisonment for a period not exceeding six (6) months.

Repeal of laws and savings

65. (1) The laws mentioned in the first and second columns of the Schedule to this By-law are hereby repealed to the extent set out in the third column of the said Schedule.

(2) Any rights accrued or obligations incurred under any of the by-laws repealed in terms of subsection (1) remain in force as if those By-laws have not been repealed.

Short title and commencement

66. This By-law is called the Cemeteries and Crematoria By-law, 2015, and takes effect on the date of publication thereof in the *Provincial Gazette* or as otherwise indicated in the notice thereto.

**SCHEDULE
LAWS REPEALED**

<i>Number and year of law</i>	<i>Title</i>	<i>Extent of repeal</i>
Provincial Notice 611 of 1956, published in Provincial Gazette 2738 dated 27 November 1956	Cemetery By-law	The whole
Municipal Notice 199 of 1994, published in Provincial Gazette 5000 dated 17 November 1994	Crematoria By-law	The whole