

THEEWATERSKLOOF MUNICIPALITY
CEMETRIES AND CREMETORIUMS BY-LAW

**Under the provisions of section 156 of the Constitution of the Republic of South Africa, 1996,
the Municipal Council of the Theewaterskloof Municipality, hereby enacts as follows:**

PREAMBLE

The purpose of this by-law is to regulate the management of cemeteries and crematoriums in the area of jurisdiction of the Theewaterskloof Municipality, and to provide for matters related thereto.

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CHAPTER 1: INTERPRETATION

1. INTERPRETATION

In this by-law, the English text prevails in the event of any conflict with the Afrikaans text, and unless the context indicates otherwise –

“administrator of cemeteries and crematoriums”, means the head of the section or department of the Theewaterskloof Municipality, which has the responsibility for the administration and management of the cemeteries and crematoriums of the Theewaterskloof Municipality, and any person acting on behalf of such administrator or any person duly authorized by the Theewaterskloof Municipality to act on behalf of such administrator;

“adult grave”, means the grave of a deceased person over the age of twelve (12) years, or any deceased person, whose coffin can be accommodated in a grave excavation of two point four (2.4) meters in length and nine hundred (900) millimeter in width;

“after-hours fee”, means a fee over and above the prescribed fees, for burials or cremations outside normal cemetery and crematorium operating hours;

“anatomy subject”, means a body referred by an authorized institution or a court of law for burial, in terms of the Anatomy Act, 1959 (Act No 20 of 1959), as amended and / or the Human Tissue Act, 1983 (No 65 of 1983), as amended;

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

“berm”, means a concrete base on which a headstone or a memorial stone for a grave is erected;

“berm section”, means a section set aside by the Theewaterskloof Municipality in a cemetery, where all the memorial work are restricted to only a headstone, erected on a pre-constructed berm, and **“lawn section”** has the same meaning;

“Births and Deaths Registration Act”, means the Births and Registration Act, 1992 (Act No 51 of 1992), as amended;

“body”, means the corpse of any deceased human, including the corpse of a stillborn child;

“burial”, means the interment into the earth of a body, or any other form of burial or disposal of a body;

“burial order”, means an order for the burial of a deceased person, issued by a competent person in terms of the Births and Registration Act, 1992 (Act No 51 of 1992), as amended;

“burial register”, means the register of a cemetery or a crematorium, as contemplated in section 2 of the Births and Deaths Registration Act, 1992 (Act No 51 of 1992), as amended, wherein the entitlement to a grave or a niche and the

particulars of the deceased person or persons interred in a grave in a cemetery or a specific section of a cemetery, or the particulars of a deceased person whose ashes is kept at a cemetery or a columbarium, are recorded;

“**cemetery**”, means any property or part thereof within the municipal area of the Theewaterskloof Municipality, designated or approved by the Theewaterskloof Municipality as a cemetery;

“**child**”, means a person under the age of twelve (12) years;

“**child grave**”, means the grave of a deceased person under the age of twelve (12) years, whose coffin can be accommodated in a grave excavation of one point five (1.5) meter in length and seven hundred (700) millimeter in width;

“**columbarium**”, means the place set aside in the basement of a crematorium or a chapel, with niches or receptacles for the placement of the ashes of deceased persons;

“**commonwealth war grave**”, means any grave, gravestone, monument or memorial stone connected with a commonwealth war burial in terms of the Commonwealth War Graves Act, 1992 (Act No 8 of 1992), as amended;

“**cremation**”, means the process of disposing of a human body by fire;

“**crematorium**”, means a crematorium as contemplated in section 1 of the Regulations relating to the Management of Human Remains, as published per Government Notice R363 dated 22 May 2013, in terms of the National Health Act, 2003 (Act No 61 of 2003), as amended, and includes the buildings in which memorial ceremonies are conducted and the cremations are carried out;

“**cremated remains**”, means all the recoverable ashes of a cremated body after a cremation process;

“**exhumation**”, means the removal of human remains from a grave;

“**garden of remembrance**”, means a section of a cemetery or a crematorium set aside for the provision of niches where the ashes of a cremated body can be placed, the erection of memorial work for a deceased person can be accommodated, or the scattering of the ashes of a cremated body can take place, but does not include a columbarium;

“**grave**”, means any parcel of land or grave site, excavated and prepared for the interment of a body or the remains of a body of a deceased person within a cemetery, and can be a vacant reserved parcel of land or a grave site, and can include the body or the remains of a body of a deceased person interred in such a grave and any gravestone, memorial stone, headstone, grave tablet or any other marker or any other structure on such parcel of land or grave site:

“**gravestone**”, means an ornamental piece of stone or other material, with certain dimensions, used as a memorial work with inscriptions on a grave site, to designate who is buried in a specific grave;

“grave tablet”, means a flat ornamental grave piece of stone or other material with specific dimensions, placed in the ground and used as a memorial work in certain sections of a cemetery, with inscriptions to designate who is buried in a specific grave;

“grave of conflict”, means the grave of a deceased person who died while he or she defended the country;

“hero’s acre”, means an area set aside in a cemetery, for the burial of public hero’s;

“indigent person”, means a destitute person who has died in indigent circumstances, and is interred as a pauper when no relative or other person, a welfare organization or a non-governmental organization are willing to bear the burial or cremation costs of such a deceased person;

“interment”, means the burial or inhumation into the earth, or any other acceptable form of burial or disposal of the body of a deceased person;

“kerb stone”, means the portion of a memorial work used as edge or boundary for a grave site;

“landscape section”, means a section set aside by the Theewaterskloof Municipality in a cemetery, where all the memorial work is restricted to a grave tablet or a metal plaque or a memorial slab placed in the ground, level with or under ground level;

“lawn section”, means a section set aside by the Theewaterskloof Municipality in a cemetery, where all the memorial work are restricted to a headstone only, erected on a pre-constructed berm, and has the same meaning as **“berm section”**;

“medical officer of health”, means a person appointed in terms of the applicable legislation as medical officer of health, or any other person acting in the capacity of the medical officer of health;

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

“Municipality”, means the Theewaterskloof Municipality, and includes reference to any duly delegated and / or appointed officials and / or service providers in terms of service level agreements of the Theewaterskloof Municipality;

“Municipal Systems Act”, means the Local Government, Municipal Systems Act, 2000 (Act No 32 of 2000), as amended;

“National Health Act”, means the National Health Act, 2003 (Act No 61 of 2003), as amended;

“**niche**”, means a compartment in a columbarium or a wall of remembrance or any other similar structure, used for the placing of the ashes of a deceased person;

“**office hours**”, means the official office hours of the Municipality, as determined from time to time by the Theewaterskloof Municipality;

“**official in charge**”, means the registrar of a crematorium appointed in terms of the statutory provisions, or a person authorized by the Theewaterskloof Municipality to be in control of any cemetery;

“**operational hours**”, means the hours of a day, except for public holidays, in which an interment in a cemetery or a cremation in a crematorium may take place, as determined from time to time by the Theewaterskloof Municipality;

“**prescribed fee**”, means the fees and tariffs determined annually per resolution by the Theewaterskloof Municipality in terms of the Tariff By-law of the Theewaterskloof Municipality, and include any reference to “**prescribed fees and tariffs**”;

“**prescribed form**”, means the forms used in the administration of cemeteries and crematoriums, and the administration of interments at cemeteries and cremations at crematoriums, as determined from time to time by the Theewaterskloof Municipality;

“**public nuisance**”, means any action, omission or condition, on or at any premises or public place or public road, including any reference to any building, structure or growth on such premises, public place, or public road, which can put the safety of persons or property in jeopardy or which is unsightly, annoying, offensive or a disturbance for other persons, en includes “**nuisance**”;

“**Regulations relating to the Management of Human Remains**”, means the Regulations relating to the Management of Human Remains, as published per Government Notice R363 dated 22 May 2013, in terms of the National Health Act, 2003 (Act No 61 of 2003), as amended;

“**relevant health authority**”, means the Overberg District Municipality;

“**SANS approved**”, means material tested and approved as a South African National Standard, as contemplated in the Standards Act, 2008 (Act No 8 of 2008), as amended;

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

“**tomb**”, means a burial crypt above ground level;

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

“**wall of remembrance**”, means a wall in a cemetery or a crematorium, constructed for the placement or affixing of inscribed memorial tablets commemorating deceased persons and niches for the placement of the ashes of deceased persons; and

“**working days**”, means Mondays to Fridays, excluding public holidays.

CHAPTER 2: ESTABLISHMENT OF CEMETERIES

2. ESTABLISHMENT OF PUBLIC CEMETERIES

- (1) The Municipality shall from time to time set aside, acquire and / or develop land within the area of jurisdiction of the Municipality, for the purpose of establishing cemeteries.
- (2) The Municipality shall at all times ensure that sufficient burial space is available for the burial of the bodies of deceased persons, within the area of jurisdiction of the Municipality.
- (3) The Municipality shall be responsible for the on-going maintenance of all public cemeteries, excluding the maintenance of any memorial work erected on graves.
- (4) The Municipality may temporarily close a cemetery and suspend the use thereof for burials, for purpose of ordinary, extraordinary or urgent maintenance work, on condition that adequate prior notice of the intended closure and / or suspension of operations is given and that members of the public still shall have access to the similar burial facilities at an alternative cemetery within the area of jurisdiction of the Municipality.
- (5) The Municipality shall appoint an official in charge as caretaker for each and every cemetery, and the same person may be appointed as official in charge for different cemeteries in the area of jurisdiction of the Municipality.

3. PASSIVE CEMETERIES OR SECTIONS OF CEMETERIES

- (1) The Municipality may once a cemetery or a section of a cemetery is full and has no space left for further burials, declare by resolution and public notice, such cemetery or section of a cemetery as a passive cemetery.
- (2) The Municipality shall be responsible for the maintenance of all passive cemeteries or sections of cemeteries.

4. CLASSIFICATION OF CEMETERIES OR SECTIONS OF CEMETERIES

- (1) The Municipality may classify cemeteries or sections of cemeteries for purpose of establishing –
 - (a) different service levels for cemeteries;
 - (b) different sections for the interment of the bodies of deceased persons and the keeping of the ashes of deceased persons;
 - (c) different sections based on religious believes;
 - (d) different sections for the interment of the bodies of deceased persons who died defending their country and / or commonwealth war graves; and
 - (e) different sections in a cemetery, for the purpose of differentiating between the type of memorial work allowed in a section.
- (2) The Municipality shall not discriminate in any way against any person, with regard to the classification of cemeteries or sections of cemeteries, and the classification of cemeteries or sections of cemeteries for purpose of different service levels, shall only be done based on the principles of price differentiation in order to ensure affordability.

5. REGISTRATION OF GRAVES ON PRIVATE PROPERTY

Every owner of private property within the area of jurisdiction of the Municipality, shall inform the Municipality of the existence of identifiable graves on such property, in a format as prescribed by the Municipality, and the Municipality shall record the known particulars of such graves and the deceased buried in such graves, in a burial register as contemplated in section 21 of the Births and Deaths Registration Act.

6. ESTABLISHMENT AND CONTINUED USE OF PRIVATE CEMETERIES

- (1) No person shall within the area of jurisdiction of the Municipality establish a private cemetery, and no owner of any private cemetery already in existence shall when the use of such a cemetery has not previously been authorized by a municipal authority, continue to use such existing cemetery for burial purposes, without the approval of the Municipality being obtained, as contemplated in subsection 6(2) of this by-law.
- (2) Applications for the approval of a private cemetery shall be made to the Municipality, on a prescribed form and in the required format of the Municipality, and shall include –
 - (a) a locality plan of the private cemetery on a scale of not less than the stipulated format, showing the position of the cemetery in relation to boundaries of the property, access roads, public roads, public places and other premises or properties;
 - (b) a plan of the private cemetery on a scale of not less than the stipulated format, showing the particulars of existing and / or proposed grave sites, internal roads and path ways, drainage, water reticulation, sewage and buildings;
 - (c) particulars of records or registers kept or proposed to be kept for the identification of graves, internments of the bodies of deceased and entitlement to graves;
 - (d) particulars of the owner and the caretaker of the private cemetery concerned;
 - (e) particulars and nature of the title and the registration of the land on which the private cemetery is located or to be located;
 - (f) proof, to the satisfaction of the Municipality, that the owner of the private cemetery has adequate security and insurance to be able to discharge the obligations and requirements of operating and maintaining a private cemetery for the present and future; and
 - (g) a schedule of current or proposed burial fees to be charged or currently charged.
- (3) A notice with regard to the application received, as contemplated in subsection 6(2) of this by-law, shall be published in a newspaper that is circulated in the area of jurisdiction of the Municipality for public comment on the application, at the cost of the applicant, and the application shall be considered for approval by the Municipality, subject to the objections and / or comments received, within sixty (60) days of the date of closure of the period for public comment.
- (4) The authorization of the private cemetery or the disapproval of the application shall be provide to the applicant in writing, stating the conditions of approval and / or the conditions for operating a private cemetery, or the reasons for non-approval of an application.
- (5) The owner of a private cemetery shall be responsible for the maintenance thereof.

CHAPTER 3: DISPOSAL OF BODIES

7. REQUIREMENTS FOR THE DISPOSAL OF A BODY

- (1) No person may dispose of or attempt to dispose of a body, without permission being obtained from the Municipality, and then only –
 - (a) by interment of such a body in a private cemetery or a public cemetery established by the Municipality; or
 - (b) by cremation of such a body in a registered crematorium.
- (2) A person may not dispose of or inter or cremate a body in a crematorium without –
 - (a) the permission of an official in charge of such a facility;
 - (b) an original burial order issued in terms of the Births and Deaths Registration Act; and
 - (c) before arranging a date and a time for such an interment or a cremation with the responsible official in charge.
- (3) No body intended for interment or cremation may be presented at a cemetery or crematorium for that purpose, unless being first enclosed in a sealed body bag and / or a coffin, and where there is religious objection to the burial of a body in a body bag or a coffin, a body may be covered in a burial shroud or other suitable perishable material.

8. FUNERAL UNDERTAKERS

- (1) No funeral undertaker shall inter a body in a cemetery or cremate a body in a crematorium, in the area of jurisdiction of the Municipality, unless –
 - (a) such funeral undertaker is in possession of a certificate of competence issued in terms of the National Health Act and the Regulations relating to the Management of Human Remains;
 - (b) the premises from which the funeral undertaker operates is zoned for such a business in accordance with the applicable zoning scheme; and
 - (c) all the requirements of a funeral undertaker and a funeral undertaker's premises and a mortuary have been complied with.
- (2) Funeral undertakers shall keep record of all bodies received, and the burial orders for such bodies.
- (3) An official in charge may refuse to inter or cremate a body presented by an undertaker for interment or cremation, which does not comply with the provisions of this by-law, and shall when such interment or cremation has been refused, shall report the reasons for such refusal, in writing to the Administrator of Cemeteries and Crematoriums of the Municipality and the funeral undertaker.

9. APPLICATIONS FOR AN INTERMENT OR A CREMATION

- (1) Nobody shall be interred at a cemetery or cremated at a crematorium, without the permission of an official in charge.
- (2) A body shall be interred in a coffin or a body bag or both, unless there is an objection thereto in terms of religious ground as contemplate in subsection 9(8) of this by-law.
- (3) A person intending to inter or cremate a body shall complete and submit the prescribed application form, together with a burial order, to an official in charge, for approval of the interment or the cremation.
- (4) The next of kin of the deceased person, or any other person who is as such authorized by the next of kin of the deceased person, shall by signature authorize the application, as contemplated in subsection 9(3) of this by-law, for interment or cremation.
- (5) Despite the provisions of subsection 9(4) of this by-law, an official in charge, when he or she is satisfied that the signature of the next of kin cannot be obtained in time or when he or she is advised by a medical officer of health that the immediate interment of a body is desirable to safeguard public health, may authorize an application for an interment or a cremation, without the approval of the next of kin of a deceased.
- (6) An application for an interment or a cremation, shall –
 - (a) be submitted at least three (3) working days before such interment or cremation has to take place, subject to the provisions of subsection 9(8) of this by-law;
 - (b) indicate whether the application is in respect of a first, a second or a third interment in a particular grave; and
 - (c) indicate the requested date and time for an interment or a cremation.
- (7) An official in charge shall only approve an application for an interment or a cremation when –
 - (a) it is accompanied by an original burial order in terms of the Births and Deaths Registration Act;
 - (b) the prescribed fee has been paid; and
 - (c) an application in terms of subsection 9(3), compliant to subsection 9(6) of this by-law has been submitted.
- (8) An official in charge shall where necessary and / or applicable, take into account the customs or religious beliefs of a deceased person and / or the next of kin of a deceased person, when approving an interment or a cremation.

10. BURIAL REGISTERS

- (1) An official in charge shall maintain a burial register for every cemetery or crematorium, in accordance with section 21 of the Birth and Deaths Registration Act.
- (2) The Municipality shall maintain a duplicate copy of the burial register contemplated in subsection 10(1) of this by-law, at any other place than the place where the burial register of a cemetery or a crematorium is kept.

11. THE ALLOCATION AND RESERVATION OF GRAVE SITES AND NICHE

- (1) An application to reserve a grave site in a public cemetery or a niche in a public crematorium for future use shall be made to an official in charge.
- (2) A surviving spouse or a partner in cohabitation of a deceased person, may apply for an adjoining grave site or a niche to be reserved, when available.
- (3) A grave or a niche at a public cemetery or a niche in a public crematorium, shall only be reserved for future use upon payment of the prescribed fees or tariffs.

12. POSTPONEMENT OR CANCELLATION OF AN INTERMENT OR A CREMATION

- (1) Any person or persons who wish to acquire the use of a grave site at a public cemetery or a niche at a public crematorium, shall apply to the Municipality for such use on the prescribed form, and such grave site or niche shall be allotted to an applicant for the interment or the ashes of a deceased person.
- (2) The person or persons, who acquired the use of a grave site or niche, shall accept the responsibility for the maintenance of such a grave site or niche, and when a memorial work has been erected on such grave site shall accept responsibility for the maintenance and repair of such memorial work.
- (3) An interment or a cremation may be postponed or cancelled when requested by the original applicant for an interment or a cremation, or when postponement is requested by the next of kin of the deceased or the Administrator of Cemeteries and Crematoriums or a medical officer of health for operational, medical and / or administrative reasons, or shall be postponed or cancelled when ordered as such by an order of a court.
- (4) Prior notice of the postponement or a cancellation of an interment or cremation shall be given on the prescribed form, to an official in charge, who then shall approve the postponement or the cancellation, at least one (1) working day before such interment or cremation.
- (5) In case of the cancellation of an interment –
 - (a) a refund will not be made for costs incurred for the opening or the digging or preparation of a grave or a reserved grave; and
 - (b) the Municipality shall only refund an original applicant for costs incurred for digging a new grave, when the grave can be used for another burial within a reasonable period of time.

13. RESTRICTION OF THE NUMBER OF BODIES IN A COFFIN

- (1) Only one (1) body per coffin shall be allowed for an interment or a cremation.
- (2) The interment of more than one (1) body in a coffin may be allowed in special circumstances on payment of the prescribed application fee, when an application for such consent is submitted to the Municipality and approved by the Municipality.
- (3) The approval contemplated in subsection 13(2) of this by-law, may only be made in respect of –
 - (a) family members who either died together or a short while after each other, and on condition that the interment of the first deceased family member has not yet taken place;
 - (b) a mother and child who died during childbirth;
 - (c) two (2) married persons or two (2) persons who lived together as partners in cohabitation;
 - (d) unrelated deceased persons, whose families have no objection to them be interred together and / or who request such interment; or
 - (e) the remains of bodies from an anatomy project of an authorized organization and / or in terms of a court order.

14. THE INTERMENT OF A BODY IN A GRAVE AND THE USE OF A GRAVE FOR SUBSEQUENT INTERMENTS

- (1) The interment of a body may only take place in a grave allocated therefore by an official in charge.
- (2) Not more than three (3) coffins may be interred in the same grave;
- (3) A second or a third interment in a grave may only be allowed, when –
 - (a) an application has been made to an official in charge and written permission has been granted;
 - (b) the grave concerned has been deepened and prepared for a second or a third interment;
 - (c) at least (12) twelve months from the previous interment have elapsed; and
 - (d) when the prescribed fee has been paid;
- (4) A person who applied for either a second or third interment, shall –
 - (a) provide at least three (3) working days prior notice of such interment; and
 - (b) at his or her own costs remove, and subsequent to the interment, replace all memorial work on such a grave.

15. ENTITLEMENT TO A GRAVE SITE OR A NICHE

- (1) The entitlement to a grave site or a niche is vested in the name of the person who purchased such entitlement or for which it was purchased, as recorded in a burial register of a cemetery.
- (2) The holder of an entitlement to a grave site or a niche in a cemetery or a crematorium shall include –
 - (a) the person who purchased a grave or a niche or who received a grave or a niche as a gift from the purchaser, and whose particulars appears in the burial register of the cemetery concerned;
 - (b) the person in whose name the prescribed burial fees in respect of the first interment in a grave site has been paid;
 - (c) a person to whom the entitlement to a grave site or a niche has been transferred; or
 - (d) a person who inherited the entitlement to a grave site or a niche.
- (3) The entitlement to a grave site or a niche is transferable, and such transfer only becomes effective when recorded by the Municipality in a burial register.
- (4) When there is a dispute about the entitlement to a grave site or a niche, the enrolment information contained in the burial register shall be used by the Municipality to determine the entitlement to a grave site or a niche, until an arbitration order or a court order has been issued on the matter.
- (5) The Municipality may purchase the entitlement to an unused grave site or a niche, when it is necessary for efficient administration of a cemetery or a crematorium, or for reasonable environmental considerations or when such grave or niche is required for use, provided that just compensation be paid for such purchase.
- (6) The right of use of a niche shall accrue to the Municipality, when the ashes of a deceased person and the commemorative plate are removed from a niche, by the next of kin of such deceased person.

16. MEASUREMENTS OF GRAVES

The standard size of a grave shall be, subject to the requirements and provisions of section 7 and 9 of this by-law –

- (a) an adult's grave shall measure two thousand three hundred (2 300) millimeter in length and nine hundred (900) millimeter in width and at least two thousand (2 000) millimeter in depth; and
- (a) a child's grave shall measure one thousand five hundred (1500) millimeter in length and seven hundred (700) millimeter in width and at least one thousand five hundred (1 500) millimeter in depth.

17. THE ENLARGING AND DEEPENING OF A GRAVE

- (1) Where the interment of a body requires a grave in excess of the standard dimensions of a grave, the burial notice shall specify the dimensions of the coffin to be used and its fittings.
- (2) A request for the enlarging or deepening of a grave shall be submitted at least three (3) working days prior to a burial.
- (3) When a coffin is too large for the size of a standard adult grave, such grave shall be enlarged to accommodate the coffin concerned.
- (4) When the coffin of a deceased child is too large for a child's grave, such coffin shall be buried in an adult's grave, on payment of the prescribed fee.

18. REQUIREMENTS FOR COFFINS

- (1) Coffins to be placed in graves shall be made of natural soft wood or other perishable material, provided that any attachments to a coffin may be manufactured from any other material.
- (2) Coffins intended for cremation shall be constructed mainly of timber or wood derivatives.
- (3) The provisions of subsection 18(1) of this by-law shall not apply to the interment of a coffin in a tomb.

19. REQUIREMENTS FOR THE FILLING OF GRAVES

- (1) Every coffin shall be covered with at least three hundred (300) millimeter of soil immediately after interment.
- (2) The coffin of an interred adult shall at least be covered by one thousand two hundred (1 200) millimeter of soil, measured between the top of the coffin and the surface of the ground, and in the case of the coffin of a child nine hundred (900) millimeter of soil.
- (3) The provisions of subsections 19(1) and 19(2) of this by-law, shall not apply to the interment of a coffin in a tomb.

20. SPECIFIC USE OF BODY BAGS

- (1) When more than one body is buried in a coffin, each body shall be contained in a separate body bag.
- (2) A body intended for burial at a cemetery or a cremation in a crematorium, shall be sealed in a body bag or be sealed inside a coffin, unless this is in conflict with the tradition, customs or religious beliefs of the deceased person or the family of a deceased person.

CHAPTER 4:

FUNERALS AND FUNERAL PROCESSIONS

21. HOLDING OF RELIGIOUS SERVICES AND MEMORIAL SERVICES

- (1) Religious services and memorial service of any religious denomination may on application to an official in charge and on payment of the prescribed fee, be held at a cemetery or a crematorium.
- (2) No person shall conduct a religious service or a memorial service according to the religious rites of a specific denomination, in any such section of a cemetery reserved for the use by members of another religious denomination.
- (3) No music or singing shall be allowed at a funeral or a memorial service, except -
 - (a) with the prior approval of an official in charge; and
 - (b) at military funerals.

22. CONTROL OVER HEARSE

No person may –

- (a) drive a hearse or cause a hearse to be driven in a cemetery, except on a designated roadway; or
- (b) park a hearse in a cemetery in such a manner that it interferes with other burials in progress or official vehicles.

23. TRANSPORT OF COFFINS AND BODIES

- (1) A funeral undertaker and / or the next of kin of a deceased person, shall be responsible at their own costs for ensuring that a coffin is conveyed to a cemetery for burial or to a crematorium for cremation.
- (2) No person may in a street, a cemetery, a crematorium or other public place convey a body in a disrespectful manner, or allow such body to be uncovered or exposed.

24. AUTHORITY OF AN OFFICIAL IN CHARGE

- (1) An official in charge at a cemetery or a crematorium shall have the authority to issue instructions to any user of and / or visitor to a cemetery and / or a crematorium, relating to –
 - (a) the parking of vehicles;
 - (b) a funeral procession; or
 - (c) the duration of a funeral service, as contemplated in section 25 of this by-law.
- (2) Every person taking part in a funeral service or a procession at a cemetery, or attending a cremation service, shall comply with all reasonable instructions of an official in charge.

25. DURATION OF FUNERAL, CREMATION, RELIGIOUS OR MEMORIAL SERVICES AT A CEMETERY OR A CREMATORIUM

No person may occupy a chapel or any part thereof or any other facility at a cemetery or a crematorium, for longer than the allocated time for a funeral or a cremation or a religious service or a memorial service.

26. HOURS FOR INTERMENTS AND CREMATIONS

- (1) An interment or a cremation may take place, subject to subsection 26(2) of this by-law, between the hours and on the days as determined by the Municipality.
- (2) An official in charge may, subject to such conditions as he or she may determine to be applicable, and on payment of the prescribed after-hours fees, give permission to inter or cremate a body outside the stipulated operational hours of a cemetery or a crematorium.
- (3) When a burial takes place outside the stipulated operational hours of a cemetery, the applicant shall provide the tools and / or equipment required for the closing of a grave and assume the responsibility of closing the grave concerned.
- (4) When requested, the service of closing of a grave outside the stipulated operational hours may be provided by the Municipality, on payment of the prescribed after-hours fee and subject to such conditions as an official in charge may determine.

27. MARKING OF GRAVES

Until such time as a memorial work or a similar memorial object has been erected on a grave, an official in charge shall designate such grave site by affixing an identification plate on it, bearing the number of the grave and any other information deemed applicable by the official in charge.

CHAPTER 5: RE-OPENING OF GRAVES AND EXHUMATIONS

28. AUTHORIZATION FOR THE EXHUMATION OF HUMAN REMAINS

- (1) The exhumation of human remains shall always be carried out subject to the provisions of the National Health Act, the Regulations relating to the Management of Human Remains and other applicable legislation.
- (2) No person may exhume or cause human remains to be exhumed, without the written consent of –
 - (a) the Municipality;
 - (b) the Provincial Department of Health and / or the relevant authority at the Western Cape Provincial Government; and
 - (c) a medical officer of health.

- (3) An authorization for an exhumation shall not be issued, without a re-burial or cremation order also being issued by the Municipality.
- (4) Human remains shall only be exhumed with the approval of the next of kin of the deceased person to be exhumed, subject thereto that the exhumation of human remains shall take place when ordered by a court of law, irrespective whether the approval of the next of kin of the deceased has been obtained or not.
- (5) Human remains shall only be exhumed for the following reasons –
 - (a) the removal of human remains from a grave for interment in another grave allocated in the same cemetery;
 - (b) removal for re-interment in another cemetery;
 - (c) removal for cremation;
 - (d) removal for forensic examination of the remains of the deceased person, as ordered by a court of law;
 - (e) to be transferred from an indigent grave to a normal grave, in the instant where a deceased person has been interred as an indigent person;
 - (f) removal for legal reasons, such as crime related investigations, the verification of identification or to ascertain the cause of death; or
 - (g) removal for archeological reasons.
- (6) Additional consent for the exhumation of human remains shall be obtained from the South African Heritage Resources Agency in terms of subsection 36(3) of the National Heritage Resources Act, 1999 (Act No 25 of 1999), as amended, when a grave is older than sixty (60) years and situated outside a cemetery administered by the Municipality or is a grave of a victim of conflict.
- (7) No person may disinter, remove, re-inter or cremate the human remains interred in a commonwealth war grave, or otherwise interfere with such grave or burial ground, other than in accordance with section 3 of the Commonwealth War Graves Act, 1992 (Act No 8 of 1992), as amended.

29. REQUIREMENTS FOR THE EXHUMATION OF HUMAN REMAINS

- (1) The Municipality shall only grant consent for the exhumation of human remains, on condition that –
 - (a) an application for exhumation is received on the prescribed form;
 - (b) the required consents are provided with the application for exhumation;
 - (c) the prescribed fees for exhumation are paid on application; and
 - (d) the exhumation is to be done by a registered funeral undertaker.

- (2) The approved application and required consents for exhumation shall be provided in writing to the official in charge of the cemetery concerned, at least five (5) working days prior to the date requested for exhumation of the grave concerned, where after the official in charge shall –
- (a) inform the relevant Provincial Commissioner of the South African Police Service, of the intended exhumation and the proposed date of exhumation and request the presence of a member of the South African Police Service; and
 - (b) request the relevant health authority to provide a registered environmental health practitioner to supervise the intended exhumation on the proposed date of exhumation.
- (3) On the date of exhumation of the human remains from the grave concerned –
- (a) a member of the South African Police Service shall always be present while the exhumation is being conducted;
 - (b) only a registered funeral undertaker, under the supervision of the official in charge of the involved cemetery, shall excavate the grave for exhumation;
 - (c) the cemetery shall be open to the public and the exhumation shall take place under the supervision of the delegated environmental health officer;
 - (d) the disinterment and removal of the human remains from the grave concerned, shall be carried out under the supervision of a registered environmental health practitioner from the relevant health authority, who shall monitor the exhumation process to ensure that –
 - (i) no health nuisance or hazard is created;
 - (ii) the grave and the human remains are treated with disinfectant after exhumation and that other protective measures are implemented as he or she deem necessary;
 - (iii) an adequate supply of water, soap and disinfectants for cleansing purposes are available for persons handling the human remains; and
 - (iv) the correct grave is opened.
 - (e) only persons with direct involvement shall be present at the disinterment or removal of human remains; and
 - (f) no dogs or animals shall be present at a grave site.

30. THE EXHUMATION AND THE RE-INTERMENT OR THE CREMATION OF HUMAN REMAINS

- (1) The Municipality may when the body of a deceased person has been interred in contravention with the provisions of this by-law, exhume such body in terms of the provisions of sections 28 and 29 of this by-law and re-inter it in another grave or cremate it, on condition that the relatives of the deceased person shall be –
- (a) notified of the intended exhumation and the re-interment or the cremation; and
 - (b) allowed to attend the intended exhumation and re-interment or cremation.

(2) The South African Police Services shall –

- (a) when there is proof of the illegal interment of a body, immediately obtain the required approval to exhume such body;
- (b) remove such body with the assistance of the Municipality to a government mortuary for investigation; and
- (c) dispose of such body after conclusion of the investigations, in terms of the provisions of this bylaw.

31. SCREENING OF A GRAVE DURING EXHUMATION

- (1) A grave from which human remains is to be exhumed shall be screened from the view of the general public during the process of exhumation.
- (2) The responsible person carrying out the exhumation shall provide a suitable receptacle for the exhumed human remains.

CHAPTER 6: CARE AND MAINTENANCE OF GRAVES AND NICHES

32. RESPONSIBILITY FOR THE CARE AND THE MAINTENANCE OF GRAVES AND NICHES

- (1) The Municipality shall be responsible for the general maintenance of cemeteries administered by the Municipality.
- (2) The care and maintenance of grave sites and / or the memorial work erected on grave sites in a cemetery administered by the Municipality, and / or the niches provided at a cemetery and / or a crematorium administered by the Municipality, shall be the responsibility of the person who own the entitlement to such grave site or niche, or the next of kin of the deceased person interred in the grave concerned or the deceased person whose ashes has been placed in such a niche.

33. CONDITIONS FOR THE CARE AND THE MAINTENANCE OF GRAVES AND NICHES

- (1) The person who own the entitlement to a grave site, or the next of kin of the deceased person interred in such a grave, shall keep such grave site in proper order and clear of weeds and grass, and may subject to subsections 33(2)(a) and 33(2)(b) of this bylaw, prune, cut down, dig up or remove any plant, flower, scrub or tree on such grave site, and when such person or persons fail to do so, the Municipality may carry out the necessary work and recover the costs from such person or persons.
- (2) No person may without the permission of an official in charge -
 - (a) plant, cut or remove plants, shrubs or flowers on any grave or in a cemetery;
 - or

- (b) place a decorative metal trellis or railing on any grave.
- (3) Natural or artificial flowers in receptacles may be placed on a grave, except for a grave within a lawn section and at a niche in a garden of remembrance or a wall of remembrance, where such flowers may only be placed in the special receptacle mounted on the head stone or the niche for flowers.
- (4) An official in charge may remove all withered natural flowers, faded or damaged artificial flowers and any empty receptacle placed on a grave.
- (5) The Municipality may at its own discretion, undertake to care and maintain any grave or niche for a period of time, on payment of the prescribed fees and tariffs.
- (6) The Municipality is not liable for any loss or damage to any object on a grave, unless such loss or damage is a result of the negligence of any employee of the Municipality.

CHAPTER 7: ERECTION OF MEMORIAL WORK

34. ERECTION OF MEMORIAL WORK

- (1) A person intending to erect a headstone, a gravestone, a grave tablet, a memorial stone, a memorial slab, a monument, a metal plaque, or any other memorial work or object on a grave at a cemetery, shall submit an application on the prescribed application form to an official in charge, for the erection of such memorial work.
- (2) The application contemplated in subsection 34(1) of this by-law, shall be submitted together with the prescribed fees, the essential dimensions of the proposed memorial work, designs sketches of the proposed memorial work and the foundations thereof, particulars of the material to be used for the proposed memorial work and foundations, and the proposed inscriptions on such memorial work, not to less than ten (10) working days before the date of the erection of such memorial work, to an official in charge.
- (3) A memorial work may only be erected during normal working hours, but may by arrangement and with the approval of an official in charge, be erected outside normal working hours.
- (4) No person may –
 - (a) erect a memorial work, or bring material into a cemetery for the purpose of erecting a memorial work, without the written consent of an official in charge;
 - (b) erect a memorial work on a grave site, within twelve (12) months after date of interment, without the written consent of an official in charge, and such consent shall only be provided on condition that the applicant provide proof that measures shall be implemented for the stabilization of the soil, that repairs shall be carried out on memorial work damaged by the subsidence of the soil and that the Municipality shall be indemnified against any claims arising as a result of damages to memorial work caused by subsidence of the soil;
 - (c) erect a memorial work on a grave site, except in such position as an official in charge may direct;

- (d) remove any memorial work for additional inscriptions or other alterations without the consent of an official in charge; or
 - (e) erect any memorial work on a Saturday, a Sunday or a public holiday, without the written consent of an official in charge.
- (5) The Municipality is not liable for damage to memorial work resulting from any subsiding soil or any other soil conditions.
- (6) A person erecting a memorial work shall at the request of an official in charge produce the written consent for such erection, contemplated in subsection 34(4)(a) of this by-law.
- (7) All memorial work shall be erected in accordance with the submitted and approved plans for such memorial work, in the designated position and on the designated grave site for the erection of such memorial work, to the satisfaction of an official in charge, and no memorial work shall be erected in inclement weather or while the soil in a cemetery is in an unsuitable condition.
- (8) Any memorial work which has not been erected to the satisfaction of an official in charge in accordance with the submitted and approved plans for such memorial work, shall be rectified by the person erecting it within one (1) month after being notified of the required correction or be removed at the expense of the person who erected such memorial work.
- (9) A memorial work or material to be used in the erection of a memorial work may not be conveyed in a cemetery or a crematorium, in such a manner that may cause damage to the buildings, roadways, pathways, lawns or other memorial work in such cemetery or crematorium.
- (10) Any surplus material or rubble resulting from the erection of any memorial work, shall be removed by the person responsible for such erection work, immediately after the completion of any work on a memorial.

35. INFERIOR CRAFTSMANSHIP

- (1) The Municipality may prohibit the erection of a memorial work, when the proposed materials to be used or the dimensions and design of such proposed memorial work do not comply to the specifications and provisions of this by-law or industry standards, or are of inferior quality and / or design, or the proposed inscriptions on a memorial work are unacceptable, indecent, offensive or objectionable.
- (2) The Municipality may remove erected memorial work, without any compensation to the person responsible for the grave site -
- (a) which have not be erected in accordance with submitted and approved plans;
 - (b) which have been erected without approved plans or any consent or payment of the prescribed fees;
 - (c) which are dilapidated and / or in disrepair;
 - (d) which have been damaged and have not been repaired for a period longer than twelve (12) months, in spite of notices for repair served on the responsible person or persons for the maintenance of such memorial work;

- (e) which are of inferior craftsmanship or quality;
- (f) with inscriptions which are unacceptable, indecent, offensive or objectionable; or
- (g) which are in contravention with the provisions of this by-law.

36. INSCRIPTIONS ON MEMORIAL WORK

- (1) The official grave number of the grave on which a headstone, a gravestone, a grave tablet, a memorial stone, a memorial slab, a monument, a metal plaque, or any other work or object is erected, shall be displayed on such memorial work in permanent and visible markings –
 - (a) on the side of the base of a headstone, a gravestone, a memorial stone, a memorial slab, a monument, a metal plaque, or any other work or object; or
 - (b) in the lower left hand corner, of the surface of a grave tablet or a memorial slab erected on a grave in a landscape section of a cemetery.
- (2) Lettering on memorial work shall preferably be engraved thereon, or when lettering protrudes from the surface of a memorial work, it shall be of durable material and be permanently affixed.
- (3) The name of the manufacturer, designer or erector of a memorial work may appear on a memorial work with the consent of the customer, on condition that no address or contact particulars shall be included in such address, and that such name shall be engraved or affixed at the base of the memorial work concerned.

37. REPAIR AND REMOVAL OF MEMORIAL WORK

- (1) Only a person or persons responsible for the maintenance, repair and upkeep of a memorial work on a grave site or a niche, as contemplated in subsection 11(2) of this by-law, or a person authorized in writing by such person or persons, may with the written permission of an official in charge, dismantle, alter, repair, remove or disturb any memorial work on a grave site or a niche.
- (2) A dismantled memorial work shall either be removed from a cemetery or when such memorial work has been dismantled for the repair thereof, such memorial work may be left temporarily on the grave site on which such memorial work was erected, for a period not exceeding thirty (30) days after the dismantling thereof.
- (3) An official in charge may in the case of a second or subsequent interment in a grave, permit the memorial work concerned to be stored elsewhere in a cemetery, for a period not exceeding thirty (30) days after such interment.
- (4) The person dismantling and / or repairing a memorial work or niche, as contemplated in subsection 37(1) of this by-law, shall immediately after the work are completed, remove any surplus material or rubble resulting from any work.
- (5) When a person or persons responsible for the maintenance, repair and upkeep of a memorial work on a grave site or a niche, referred to in subsection 37(1) of this by-law –
 - (a) fails to re-erect a dismantled memorial work or niche within thirty (30) days after it was dismantled; or

- (b) leaves such dismantled memorial work or niche within the cemetery in contravention with the provisions of subsections 37(2) and 37(3) of this by-law,

the Municipality may give thirty (30) days written notice to such person or persons, instructing him or her to remove such memorial work or niche and any rubble associated therewith, from the cemetery at his or her own expense or to re-erect such memorial work or niche immediately.

- (6) When any memorial work or niche in a cemetery has –

- (a) been damaged;
- (b) fallen in a state of disrepair;
- (c) become a danger to the public; or
- (d) been erected in contravention with the provisions of this by-law,

the Municipality may give thirty (30) days written notice to a person or persons responsible for the maintenance, repair and upkeep of a memorial work on a grave site or a niche, referred to subsection 37(1) of this by-law, instructing him or her to –

- (i) alter, repair, renovate or make such memorial work or niche safe, so that it complies with the provisions of this by-law; or
- (ii) dismantle and remove such memorial work or niche from the cemetery together with all rubble associated therewith,

at his or her own expense and within a period specified in the notice.

- (7) When a person or persons responsible for the maintenance, repair and upkeep of a memorial work on a grave site or a niche, referred to in subsection 37(1) of this by-law, fails to comply with a notice issued in terms of subsections 37(5) or 37(6) of this by-law, the Municipality may –

- (a) repair and re-erect the memorial work or niche concerned;
- (b) dismantle, remove and dispose of the memorial work or niche concerned and remove any rubble associated therewith; or
- (c) make the memorial work or niche safe,

and such person or persons responsible for the maintenance, repair and upkeep of a memorial work on a grave site or a niche, shall be liable for any costs incurred by the Municipality for the repair, re-erection, dismantling, removal or disposal of a memorial work or a niche.

- (8) The Municipality may without giving any notice, or incurring any liability to the person or persons responsible for the maintenance, repair and upkeep of a memorial work on a grave site or a niche, referred to in subsection 37(1) of this by-law –

- (a) dismantle a memorial work or a niche and remove such memorial work or niche, and any rubble associated therewith, except memorial work that is protected by the provisions of the National Heritage Resources Act, 1999 (Act No 25 of 1999), as amended; or
 - (b) make a memorial work or a niche safe, when the memorial work or niche concerned has become so dangerous, that immediate steps to safeguard the safety of the public are required.
- (9) When the Municipality has acted in terms of subsection 37(8) of this by-law, it shall immediately, in writing notify the person or persons responsible for the maintenance, repair and upkeep of a memorial work on a grave site or a niche, that unless he or she reclaims the memorial work or the niche from a cemetery within a specified period as stated in the notice, the Municipality shall dispose of such memorial work or niche.
- (10) The person or persons referred to in subsection 37(1) of this by-law shall be liable for the costs incurred by the Municipality, for the actions taken by the Municipality in terms of subsection 37(8) of this by-law, and when such person or persons fails to pay the costs involved, or fails to reclaim the dismantled memorial work or niche, the Municipality may dispose of such memorial work or niche in any manner it deems fit, and when any proceeds are derived from the disposal, such proceeds shall be offset against the costs of the dismantling, removal, storing, and disposing, of the memorial work and the rubble associated therewith.
- (11) The Municipality may, when the contact particulars of the person or persons responsible for the maintenance, repair and upkeep of a memorial work on a grave site or a niche are not known, place a notice in a newspaper circulating in the area of jurisdiction of the Municipality, notifying the responsible persons of the required actions for the repair, renovation or removal of damaged, dangerous and dilapidated memorial work or niche to be undertaken within a period of thirty (30) days of the date of publication of the notice, and give notice that the Municipality –
- (a) shall carry out such repair work, as required to address the situation with the damaged, dangerous and dilapidated memorial work or niche in a cemetery, when it are not carried out to the satisfaction of the Municipality within the specified period;
 - (b) may remove the memorial work or niche concerned without compensation; and
 - (c) shall recover the costs for repair, renovation or removal from the person or persons concerned.
- (12) The Municipality may after due notice to a person or persons responsible for the erection of a memorial work, at any time alter the positioning of such a memorial work and recover the costs of doing so from the person who erected the memorial work concerned, provided that in any instance where such a memorial was originally placed in a position with the consent of the Municipality, any alteration shall be done at the expense of the Municipality.

38. GENERAL REQUIREMENTS FOR MEMORIAL WORK

- (1) All memorial work shall be constructed or made of marble or granite or any other SANS approved hard stone or durable material, with a life expectancy of at least twenty five (25) years.
- (2) Memorial work may be erected on a single grave or over two (2) adjoining graves as a double memorial work.
- (3) Any person erecting memorial work in a cemetery or a niche in a crematorium shall do so with the approval of an official in charge, after submission of the required plans.
- (4) All memorial work erected in a cemetery or a crematorium, shall comply with the following general requirements –
 - (a) any part of a memorial work joined to any other part of a memorial work, shall be joined by means of the use of copper or galvanized iron pins in terms of the following specifications –
 - (i) for memorial work up to a height of five hundred (500) millimeter, two (2) or more pins of at least five (5) millimeter thick and one hundred (100) millimeter long;
 - (ii) for memorial work of five hundred and one (501) millimeter up to a height of one thousand (1 000) millimeter, two (2) or more pins of at least ten (10) millimeter thick and two hundred (200) millimeter long; or
 - (iii) for memorial work one thousand and one (1 001) millimeter and higher, at least two (2) or more pins of at least twenty (20) millimeter thick and three hundred (300) millimeter long;
 - (b) any part of a memorial work which rests on the ground, or any stone or foundation shall be properly squared, secured and bedded;
 - (c) no material of uneven thickness, or having a corner wanting may be used;
 - (d) the undersides of every flat memorial slab or grave tablet, and the base of every other memorial work shall be sunk at least fifty (50) millimeter below the natural level of the ground;
 - (e) no border or kerb stone, which is more than two hundred twenty five (225) millimeter above the surface of the ground or more than two hundred (200) millimeter below the surface, shall be used without the consent of the Municipality;
 - (f) all memorial work, including the headstones, kerb and border stones shall be securely affixed or clamped from the inside, with round copper or galvanized iron pins or clamps;
 - (g) all headstones and other memorial work up to one hundred and fifty (150) millimeter in thickness, shall be securely attached in an acceptable manner to the base of a memorial work;
 - (h) all the components of a memorial work or a niche shall be completed off-site, before being brought into a cemetery or a crematorium for erection;
 - (i) foot stones and kerb stones used at a single grave, shall consist of one solid piece of material;

- (j) memorial work affixed on a base shall always be -
 - (i) set on a concrete foundation approved by an official in charge;
 - (ii) set in good quality cement mortar; and
 - (iii) set on a base not less than one thousand (1 000) millimeter by three hundred and thirty (330) millimeter by three hundred and thirty (330) millimeter in size;
- (k) the concrete foundation provided for headstones shall have the following dimensions –
 - (i) the length at right angles to the longitudinal axis of the grave, shall be at least one thousand three hundred (1 300) millimeters;
 - (ii) the width shall not be less than the width of the bottom of the headstone plus a protrusion of minimum one hundred and sixty (160) millimeters each side;
 - (iii) the depth or thickness shall not be less than one hundred and sixty (160) millimeters; and
 - (iv) the top level of the foundation shall be at least sixty (60) millimeters below ground level;
- (l) the concrete foundations for kerb and border stones, shall extend across the foot and sides of a grave, and shall have the following dimensions;
 - (i) the length shall be at least one thousand two hundred and twenty (1 220) millimeters;
 - (ii) the width shall be at least three hundred and thirty (330) millimeters;
 - (iii) the depth or thickness shall be at least one hundred and ten (110) millimeters; and
 - (iv) the top level of the foundation shall be at least sixty (60) millimeters below ground level;
- (m) the bottom base of a memorial work on a single grave may not be less than nine hundred (900) millimeter long, two hundred and twenty (220) millimeter wide and two hundred and fifty (250) millimeter thick, and that of a memorial work on a double grave, not less than two thousand two hundred eighty six (2 286) millimeter long by two hundred and twenty (220) mm wide by two hundred and fifty (250) millimeter thick;
- (n) when loose stone chips are placed on a grave as a covering, the level of such stone chips shall not be more than ten (10) millimeter below the level of the surrounding kerb stones or border stones.

**CHAPTER 8:
SPECIFICATIONS FOR DIFFERENT SECTIONS IN A CEMETERY**

39. DIFFERENTIATION BETWEEN SECTIONS IN A CEMETERY

- (1) The Municipality may establish different sections in a cemetery for –
 - (a) the interment of the bodies of deceased persons in coffins and / or body bags;

- (b) the keeping of the ashes of deceased persons in graves or niches;
 - (c) for persons of a specific religious believe and funeral requirements;
 - (d) the interment of the bodies of deceased who died defending their country and / or commonwealth war graves; and
 - (e) for the purpose of differentiating between the type of memorial work allowed in a specific section.
- (2) The differentiation between sections shall not be used to discriminate against any person, and no person may be refused interment in a specific section, subject to compliance to the conditions and specifications applicable to such section and the provisions of the Commonwealth War Graves Act, 1992 (Act No 8 of 1992), as amended, and other applicable legislation.

40. ESTABLISHMENT OF RELIGIOUS SECTIONS

The Municipality may establish specific religious sections for the various religions on request, and may determine the conditions and specifications for the interment of bodies in such sections, in accordance with the religious belief of the religion concerned.

41. ESTABLISHMENT OF A WAR GRAVES SECTION

The Municipality may establish a specific section of a cemetery, as a hero's acre for war graves, commonwealth war graves or graves of conflict in accordance with the applicable legislation, and may determine the conditions and specifications for the interment of bodies in such sections, in accordance with the applicable legislation and military protocol.

42. SPECIFICATIONS FOR MEMORIAL WORK IN A GARDEN OF REMEMBRANCE

- (1) A Municipality may set aside a section of a cemetery or a crematorium to be used as place where –
- (a) structures such as a wall of remembrance or other memorial facilities, with niches and / or receptacles are provide wherein the ashes of cremated bodies can be placed;
 - (b) the ashes of cremated bodies can be interred in graves;
 - (c) memorial work in the form of commemorative plates, grave tablets, memorial plaques or memorial slabs may be placed or affixed; or
 - (d) the ashes of a cremated body may be scattered.
- (2) The memorial work erected in a garden of remembrance, shall be restricted to a grave tablet or a memorial plaque or a flat memorial slab, which may be placed at designated places or affixed as covering plate on a niche or other receptacle wherein the ashes of a deceased person is stored.

- (3) The memorial tablet, memorial plaque or flat memorial slab used in a garden of remembrance, shall not exceed the dimensions of five hundred (500) millimeter in length and five hundred (500) millimeter in width, or any other dimensions provided for a specific wall of remembrance or a columbarium.

43. SPECIFICATIONS FOR MEMORIAL WORK IN A LAWN SECTION OF A CEMETERY

- (1) The Municipality may set aside and utilize a specific section of a cemetery as a lawn section, also referred to as a berm section, where special conditions for the erection of memorial work shall apply.
- (2) Only a headstone shall be erected as a memorial work on a grave in the lawn section of a cemetery, and such headstone shall be restricted to a berm provided by the Municipality.
- (3) The following specifications shall apply for memorial work on graves sites in a lawn section of a cemetery –
- (a) the dimensions of the base or the pedestal of any headstone on the grave of an adult shall not exceed nine hundred (900) millimeter in length and two hundred and sixty (260) millimeter in width, but when the base or the pedestal of the headstone is erected over two adjoining graves, such base or pedestal shall not exceed two thousand two hundred (2 200) millimeter in length and two hundred and sixty (260) millimeter in width;
 - (b) the dimensions of the pedestal or the base of any headstone on the grave of a child shall not exceed six hundred and ten (610) millimeter in length and two hundred and sixty (260) millimeter in width, but when the base or the pedestal of the headstone is erected over two adjoining graves, such base or pedestal shall not exceed one thousand two hundred (1 200) millimeter in length and two hundred and sixty (260) millimeter in width;
 - (c) no portion of a headstone may extend beyond the horizontal dimensions of the base or the pedestal of a headstone;
 - (d) a headstone shall be erected on the concrete berms supplied by the Municipality, except in the case of a temporary erection, where the applicant shall provide a foundation suitable to support the headstone, until the Municipality has installed the required berm;
 - (e) no part of any memorial work may exceed one thousand five hundred (1 500) millimeter in height above a berm;
 - (f) all headstones shall be positioned in such a way that the front edge of the berm, shall be at least one hundred and twenty (120) millimeter away from the foot of the headstone;
 - (g) the Municipality retains the right to level the surface of a grave site not covered by a headstone, to facilitate mechanized maintenance;
 - (h) the planting of any plants on the leveled portion of the grave site, referred to in subsection 43(3)(g) of this by-law, shall be prohibited, except with the specific consent of an official in charge.
 - (i) no kerb stone demarcating any grave and a slab or similar covering for a grave shall be permitted;

- (j) no other memorial work or object, other than a headstone may be placed on a berm or a grave site, and a headstone may not incorporate more than two receptacles for flowers; and
 - (k) a vase for natural flowers or artificial flowers or foliage, may be placed in a socket build in the headstone and such vase shall not exceed three hundred (300) millimeter in height.
- (4) The Municipality shall remove any memorial work, object or plant erected, placed or planted on a grave in the lawn section, which have been erected, placed or planted in contravention with the provisions of section 43(2) and 43(3) of this by-law, and the person responsible for the transgression shall be liable for any costs incurred by the Municipality.

44. SPECIFICATIONS FOR MEMORIAL WORK IN A LANDSCAPE SECTION OF A CEMETERY

- (1) The Municipality may set aside and utilize a specific section of a cemetery as a landscape section, where special conditions for the erection of memorial work shall apply.
- (2) Only a grave tablet or a metal plaque or a memorial slab shall be erected as a memorial work on a grave in a landscape section of a cemetery, which shall –
 - (a) not exceed five hundred (500) millimeter in length, five hundred (500) millimeter in width, with a minimum thickness of thirty (30) millimeter; and
 - (b) not be made of a ferrous material.
- (3) The grave tablet or a metal plaque or a flat memorial slab, as contemplated in subsection 44(2) of this by-law, shall be embedded horizontally in the ground on a suitable foundation.
- (4) Where memorial work is restricted to a grave tablet or a metal plaque or a flat memorial slab, such memorial work shall be placed horizontally, level or no more than thirty (30) millimeter below grass level.
- (5) The Municipality shall remove any memorial work, object or plant erected, placed or planted on a grave in the landscape section, which have been erected, placed or planted in contravention with the provisions of section 44(2),44(3) and 44(4) of this by-law, and the person responsible for the transgression shall be liable for any costs incurred by the Municipality.

45. SPECIFICATIONS FOR MEMORIAL WORK IN THE GENERAL MEMORIAL SECTION OF A CEMETERY

- (1) The areas in a cemetery not specifically set aside as a religious section, or a war graves section, or a garden of remembrance section, or a lawn section, or a landscape section, as contemplated in sections 40 to 44 of this by-law, are deemed to be the general monumental section of a cemetery, except when otherwise designated.
- (2) In the general monumental sections of a cemetery, provision are made for adult grave and child grave sections, and any type memorial work may be erected on such graves sites, subject to the requirements of section 34 and 36 and the specifications as contemplated in subsection 38(4) of this by-law.

- (3) The maximum horizontal measurements of any memorial work erected on a grave site in the general monumental section of a cemetery shall be –
 - (a) in the case of an adult grave, two thousand five hundred (2 500) millimeter in length and one thousand and fifty (1 050) millimeter in width; and
 - (b) in the case of a child grave, one thousand five hundred (1 500) millimeter in length and nine hundred (900) millimeter in width.
- (4) The maximum height of any memorial work shall be two thousand (2 000) millimeter, measured from ground level.

CHAPTER 9: CREMATIONS

46. APPLICATIONS FOR CREMATIONS

- (1) The Municipality may operate a crematorium, when such service is considered to be financial viable, or cremation services may be rendered by a private institution, certified and authorized to carry out the cremation of bodies.
- (2) A body may only be cremated in an authorized cremation facility and in accordance with the statutory provisions regulating the cremation of bodies.
- (3) A person who is of the intention to cremate the body of a deceased person, shall submit an application for such a cremation, on the prescribed application form for approval to the Municipality, not later than three (3) working days before the intended date of cremation and such application shall be accompanied by –
 - (a) the prescribed fee;
 - (b) a burial order as issued in terms of the Births and Deaths Registration Act;
 - (c) a death certificate; and
 - (d) the required cremation application forms.
- (4) When all the requirements as contemplated in subsection 46(3) of this by-law have been met, an official in charge shall approve an application for cremation.
- (5) When the application for cremation made in terms of subsection 46(1) of this by-law, is in respect of a body of a deceased person –
 - (a) who at the time of his or her death has been suffering from a communicable disease, as defined in section 1 of the National Health Act; or
 - (b) who at any time used a pacemaker or radioactive material was inserted in him or her as medical procedure,the applicant for the cremation shall clearly indicate these facts and whether such pacemaker or radioactive material has been removed from the body of the deceased person.

- (4) The ashes of a cremated body remaining after a cremation, may on application to an official in charge be interred at a cemetery or be placed in a niche at a cemetery or a columbarium, or be interred in a grave of a relative, in terms of the prescribed procedures and on payment of the prescribed fees.
- (5) The ashes of a cremated body, when not claimed by the next of kin of the deceased person or when no arrangements have been made for the disposal thereof, may be disposed of by an official in charge by scattering it in a garden of remembrance.

47. HOURS FOR CREMATIONS

- (1) Cremation may take place between the hours and on the days as determined by the Municipality.
- (2) No cremation may take place on public holidays.
- (3) A person may obtain a duplicate cremation certificate on application and on payment of the prescribed fee to an official in charge

CHAPTER 10: INDIGENT PERSONS

48. BURIAL OF INDIGENT PERSONS

- (1) A person submitting an application for the burial of an indigent person, shall submit a sworn affidavit with such application, stating the reasons and circumstances why the deceased should be considered an indigent person.
- (2) An indigent person may be buried or cremated according to conditions as determined by the Municipality.
- (3) When an indigent person is cremated, the ashes shall be retained by the Municipality for a period of not less than twelve (12) months.
- (4) When the ashes of an indigent person are not claimed within the period of twelve (12) months, such ashes shall be interred in an available grave or be placed in an available niche at a cemetery.

CHAPTER 11: GENERAL MATTERS

49. SERVICE PROVIDERS

- (1) The Municipality may discharge some or all of its obligations under this by-law for the rendering of cemetery or crematorium services, by entering in terms of subsection 81(2) of the Municipal Systems Act, into a service delivery agreement with a service provider
- (2) When any provision in this by-law bestows or imposes any power, function or duty of the Municipality in or on an employee of the Municipality, and such power, function or duty has in terms of subsection 81(2) of the Municipal Systems Act or any other statutory stipulation,

been assigned to a service provider, the reference to such employee shall be read as a reference to the service provider or where applicable, an authorized employee of the service provider.

50. PROHIBITED ACTS

(1) No person –

- (a) under the age of sixteen (16) years, may enter any municipal cemetery or municipal crematorium, unless accompanied by an adult or with the consent of an official in charge;
- (b) may enter or leave any municipal cemetery or municipal crematorium, except by the gateway provided for it; or
- (c) may enter any office or secured place in a municipal cemetery or a municipal crematorium without the consent of an official in charge, where such entry is prohibited.

(2) No person may within any municipal cemetery or municipal crematorium –

- (a) interfere with any fountain, statue, monument, equipment, fence, or any property of the Municipality;
- (b) chop down, cut down, pick, damage, break, deface or destroy any tree, shrub, flower, plant or seedling;
- (c) damage, deface or remove any gravestone, grave tablet or memorial stone, grave, building, boundary wall, gate, fence or other fixture, or any part thereof;
- (d) dispose of waste in any other way, except in the waste containers provided for the purpose by the Municipality ;
- (e) sit, stand, walk, climb, draw, paint or write on any grave, wall, fence or gravestone, grave tablet or memorial stone;
- (f) swim, bath or wash in any pond, fountain, artificial or natural watercourse, dam or stream, or allow any animal to enter or use such pond, fountain, artificial or natural watercourse, dam or stream;
- (g) reside and / or overnight in a cemetery, or without the written consent of the Municipality builds any structure or encroaches on any land or erect or attempt to erect any tent or similar construction, stall, booth, stand, screen or fence;
- (h) capture, chase , shoot or interfere with any fish, bird or animal, except when permitted to do so by the Municipality, or remove, interfere, damage or destroy the eggs or nests of birds;
- (i) light any fire or burn any materials or objects, unless special permission for such action has been provided by the Municipality;
- (j) drive or use a motorcycle, three or four wheel quad bike, scooter, electric

- motor vehicle, bicycle, roller-blade, roller-skate, skate board, tricycle or any other form of transport or entertainment, except when special consent has been granted for it or when required from an authorized official or a member of the South African Police in the execution of their duties;
- (k) drive a vehicle on lawns or over graves or grave sites, or exceeds the speed limit of fifteen (15) kilometers per hour, except an authorized official or members of the South African Police Services in the execution of their duties;
 - (l) solicit any business or sell, hawk, advertise, offer for sale or exhibit any article for sale, lease or hire, or distribute a pamphlet, book, handbill, advertisement or other printed material or perform any activity, without prior consent from the Municipality;
 - (m) cause a public nuisance or commit any offensive or indecent act or relieve him or her or urinate in public;
 - (n) use or enter a facility reserved for use by persons of the opposite sex, excluding children under the age of five (5) years;
 - (o) be under the influence or in the possession of liquor and / or drugs;
 - (p) play any musical instrument or music, without the written consent of an official in charge;
 - (q) deliver a public speech, except for a speech at an approved funeral service or a memorial service, or take any action or use any apparatus which may disrupt funeral proceedings or disturb public order or disturb burial ceremonies or funeral and memorial services;
 - (r) use profane or indecent language, or behave in such a manner that other persons are offended or a nuisance is created or does anything which may cause a disturbance to other persons;
 - (s) do anything which are specifically forbidden by signs and / or notices on the premises;
 - (t) bring any animal onto the premises of a cemetery or a crematorium, except for a guide dog accompanying a blind or a disabled person, or an animal used by an authorized official or a member of the South African Police Service in the execution of their duties;
 - (u) bear, display or use a firearm or any other dangerous weapon, except an authorized official or a member of the South African Police in the execution of their duties;
 - (v) access or remain in a cemetery or a crematorium without approval, at any other time except for the hours designated as the hours when such cemetery or crematorium is open for the public; and
 - (w) hinder, obstruct or resist an official in charge, or any official of the

Municipality in the performance of his or her duties or in the exercise of any authority assigned to him or her, by or in terms of this by-law.

- (3) Any animal found trespassing in a cemetery or a crematorium may be impounded in terms of the Impoundment of Animals By-law of the Theewaterskloof Municipality and shall only be released on payment of the prescribed fees and tariffs.

51. APPEALS

A person whose rights are affected by a decision of the Municipality in terms of any delegated powers, may appeal against such a decision in terms of section 62 of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000), as amended, by giving written notice of the appeal against such a decision and the reasons for the appeal to the Municipal Manager, within twenty one (21) days of the date of the notification of the decision.

52. COMMUNITY LIAISON FORUMS

- (1) The Municipality may establish liaison forums in a community for the purpose of –
- (a) creating opportunities for a local community to participate in the affairs of the Municipality, with regard to matters referred to in this by-law;
 - (b) to advise the Municipality on matters, referred to a liaison forum by the Municipality, and
 - (c) promoting a safe and healthy environment .
- (2) A liaison forum may consist of –
- (a) a member or members of an interested group, or affected persons;
 - (b) a member or members of a community; and
 - (c) a designated official or officials of the Municipality, or other organs of state.
- (3)(a) The Municipality may, when considering an application for an approval or a consent in terms of this by-law, request the input of a community liaison forum.
- (b) A liaison forum or any person or persons contemplated in subsection 52(2) of this by-law, may on their own initiative provide input to the Municipality for consideration.

53. SERVING OF NOTICES AND OTHER DOCUMENTS

- (1) A notice, instruction, letter of demand, or other document issued by the Municipality in terms of this by-law, is deemed to be duly issued, when a duly delegated official of the Municipality has signed it.
- (2) Any notice, instruction, letter of demand, or other document that is served on a person in terms of this by-law, is regarded as having been duly and effectively 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 of South Africa, with a person apparently older than sixteen years;
 - (c) when it has been posted by registered or certified mail to that person's last known residential or business address in the Republic of South Africa, and proof of the posting thereof is provided;
 - (d) if that person's address in the Republic of South Africa is unknown, when it has been served on that person's agent or representative in the Republic of South Africa, in a manner as provided in subsections 53(2)(a), 53(2)(b) or 53(2)(c) of this by-law;
 - (e) if that person's address and agent or representative in the Republic of South Africa is unknown, when it has been posted in a conspicuous place on the property or premises to which it relates; or
 - (f) in the event of a body corporate, when it has been delivered at the registered office or the business premises of the body corporate.
- (3) When any notice, instruction, letter of demand, or other document is served on a person in terms of this by-law, it is sufficient for purpose of the serving of the notice, instruction, letter of demand or other document, to describe the person in the notice, instruction, letter of demand or other document, as the owner, occupant, or holder of the property or rights in question, and it is not a requirement to name that person.
- (4) A notice, instruction, letter of demand, or other document shall for purpose of authentication, be properly signed by the Municipality.

54. OFFENCES AND PENALTIES

Any person who —

- (a) fails to comply with the instructions of an authorized official issued in terms of this by-law or a notice posted on a notice board;
- (b) fails to comply with any notice served in terms of this by-law;
- (c) contravenes any provision of this by-law; or
- (d) deliberately obstructs an authorized official in the execution of his or her duties in terms of this by-law,

is guilty of an offence and is liable on conviction, for —

- (i) a fine or imprisonment, or to such imprisonment without the option of a fine, or a fine, or to both such fine and such imprisonment;
- (ii) in the case of a successive or continuing offence, to an additional fine or an additional period of imprisonment, or such additional imprisonment without the option of a fine, or to both such additional fine and such additional imprisonment for every day such offence continues; and
- (iii) any further amount as an order of court for costs, equal to any costs and / or expenses, deemed by the Court, to have been incurred by the Municipality as a result of such contraventions.

55. CONFLICT BETWEEN LEGISLATION

When any stipulation of this by-law, is in conflict with national and provincial legislation or regulations, the national and provincial legislation or regulations shall prevail.

56. REPEAL OF BY-LAWS

(1) The provisions of any by-laws previously promulgated by the Municipality or by any of the disestablished municipalities now incorporated in the Municipality, are hereby repealed as far as they relate to matters provided for in this by-law.

(2) The following by-law of the Theewaterskloof Municipality is hereby specifically repealed –

Name of by-law	Date of publication	As a whole or partially
Bylaw relating to the control of cemeteries	PG 6234 dated 8 March 2005	As a whole

57. SHORT TITLE

This by-law shall be called the Cemeteries and Crematoriums By-Law of the Theewaterskloof Municipality.

58. OPERATIVE DATE

This by-law shall take effect on the date of publication.