

**35. Burial and exhumation of ashes**

- (1) In the absence of an arrangement between the caretaker and the person contemplated in section 34 regarding the ashes, the caretaker may bury or scatter the ashes in a garden of remembrance, where such facility is available.
- (2) A person may deposit ashes in a –
  - (a) grave; or
  - (b) niche in a –
    - (i) columbarium;
    - (ii) wall of remembrance; or
    - (ii) memorial work.
- (3) A person must obtain the consent of the caretaker if he or she wishes to –
  - (a) bury ashes in a grave;
  - (b) exhume ashes from a grave; or
  - (c) scatter ashes,and the caretaker must, on receiving payment of the prescribed fee –
  - (i) give written consent to the applicant to bury, exhume or scatter the ashes; and
  - (ii) in the instance of burial or exhumation, prepare the grave for burial or exhumation.
- (4) A grave for the burial of ashes or a niche in a columbarium must measure 610 mm in length, 610 mm in width, and 610 mm in depth.

**36. Cremation certificate**

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

**CHAPTER 8: ERECTION AND MAINTENANCE OF  
MEMORIAL WORK**

**37. Consent of Municipality**

- (1) No person may bring into a cemetery, erect, alter, paint, clean, renovate, decorate, remove or otherwise interfere with any memorial work or cut any inscription thereon in a cemetery without the written consent of the Municipality.
- (2) When erecting a memorial work, the municipality may require the submission of the following:
  - (a) A plan which gives an indication of the measurements and the position;
  - (b) specification of the material of which the memorial work is to be constructed; and

- (c) the wording of the epitaph.
- (3) The plan must be submitted 30 days before the erection commences, and must be accompanied by the prescribed fee, and the Municipality may impose conditions.
- (4) No person may bring any material for the construction of memorial work into a cemetery unless the provisions of subsection (1) to (3) have been complied with and unless all charges due in respect such grave have been paid.
- (5) The Municipality's consent of the proposed work is valid for six months only, and in the event of the memorial work not being erected within the prescribed time a new application must be submitted.
- (6) The grave number must be indicated, in clearly legible figures of 30 mm in size.
- (7) A person who contravenes a provision of subsection (1) or (4) commits an offence.

**38. Requirements for erection of memorial work**

- (1) A person erecting a memorial work must comply with the following:
  - (a) he or she must be in possession of a plan approved by the Municipality;
  - (b) conditions imposed in terms of section 37(3) must be complied with;
  - (c) no damage may be caused to any structure and no offence may be given;
  - (d) where a memorial has a pedestal on ground level or on the berm, the pedestal may not be more than 900 mm in length, 250 mm in width and 250 mm in height for a single grave, and not more than 2700 mm in length, 250 mm in width, and 250 mm in height for a double grave;
  - (e) with the permission of the next of kin, the name of the maker can be displayed on a memorial work, but no address or any other particulars may be added thereto, and the space utilized for it may not be larger than 40 x 100 mm; and
  - (f) tiles in the Garden of Remembrance must be 240 mm x 300 mm large and must be manufactured out of non-corrosive metal.
- (2) A person who does not comply with a provision in subsection (1) commits an offence.

**39. Position, movement and removal of memorial work**

(1) No person may erect a memorial work on a grave before the position has been indicated by the Municipality.

(2) Should the provisions of subsection (1) not be complied with the Municipality has the right to alter the position of the memorial work and to recover the costs from the person who erected the memorial work.

(3) Where a memorial work has originally been placed in a certain position with the express consent of the Municipality or its employee, any alteration of the position in terms of the provisions of this section is executed at the expense of the Municipality.

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

**40. Repairs to memorial work**

If the person who erected a memorial work allows it to fall into such a state of disrepair that it may cause danger or deface the cemetery, the Municipality may serve a Notice of Compliance, as contemplated in section 61, on such person.

**41. Supervision of work**

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

**42. Damaging of memorial work**

Unless due to the negligence of its employees, the Municipality is not responsible for any damage to a memorial work.

**43. Conveying of memorial work**

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

(2) A person who contravenes subsection (1) commits an offence.

**44. Vehicle and tools**

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

**45. Complying with Municipality's directions**

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

**46. Times for bringing in material and doing work**

- (1) No person may bring material into or do any work, other than the dismantling of memorial work for burial purposes, within a cemetery except during the following hours: Mondays to Fridays between the hours of 7:00 and 18:00.
- (2) No person may engage in work which may be disturbing or disruptive while a funeral is in progress.
- (3) A person who contravenes subsections (1) or (2) commits an offence.

**47. Inclement weather**

- (1) No person may fix or place any memorial work while the soil is in an unsuitable condition.
- (2) A person who contravenes subsection (1) commits an offence.

**48. Production of written permission**

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

**49. Memorial work in crematorium**

- (1) Unless a corpse was cremated in the crematorium, or a cremation certificate issued by another crematorium is submitted, no person may, without the consent of the caretaker first having been obtained, erect a memorial work in a crematorium.
- (2) A memorial work –
  - (a) if erected in a garden of remembrance –
    - (i) must be made of marble or granite; and
    - (ii) may not exceed a size of 250 mm in width, 305 mm in length, and 25 mm in thickness;
  - (b) if intended to seal a niche, must conform in size and material to the memorial work next to it and may have a photograph of the deceased person affixed to it; or
  - (c) erected on a grave, may not exceed 1,2 m in height, 610 mm in length, and 610 mm in width.
- (3) A person who erects a memorial work in contravention of subsection (1) or who contravenes a provision of subsection (2) commits an offence.

**CHAPTER 9: SECTIONS IN CEMETERY**

**50. Municipality may establish sections**

- (1) The Municipality may establish one or more of the following sections in a cemetery:
  - (a) Monumental section;

- (b) garden of remembrance;
- (c) heroes acre;
- (d) aesthetic section; or
- (e) panoramic section.

**51. Monumental section**

(1) Memorial work may be erected upon the whole surface of the grave subject thereto that the provisions of section 38 must be complied with and that the following measurements may not be exceeded:

- (a) Height: 2000 mm.
- (b) Width: 900 mm in case of a single grave, and 700 mm in case of a double grave.
- (c) Thickness: 250 mm.

(2) A person commits an offence if he or she exceeds the measurements stipulated in subsection (1);

**52. Garden of Remembrance**

(1) This section contains the wall of remembrance with niches, and a garden area in which plaques can be erected.

(2) A container intended to be placed in a niche may not exceed 300 mm x 150 mm x 150 mm in size.

(3) Flowers and wreaths may only be placed on the places provided therefore.

(4) A person who contravenes a provision of subsection (2) or (3) commits an offence.

**53. Heroes Acre**

(1) A heroes' acre consists of a structure erected for the purpose and contains no corpse but is a memorial only.

(2) No person may erect such structure without the written approval of the Municipality.

(3) The size of the structure must be 500 mm x 350 mm and must be manufactured from a non-corrodible metal or masonry.

(4) A person who interrs a corpse in contravention of subsection (1) or contravenes subsection (2) or who fails to comply with the requirements of subsection (3) commits an offence.

**54. Aesthetic section**

(1) Only a headstone may be erected, and a slab may not be erected on, and a kerb may not be erected around a grave.

(2) The dimensions of a headstone are as follows:

- (a) Adult's grave:
  - (i) Single grave: 900 mm in length by 260 mm in width.
  - (ii) Double grave: 2200 mm in length by 260 mm in width.

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

**55. Panoramic section**

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

**CHAPTER 10: PRIVATE CEMETERIES**

**56. By-laws apply**

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

**57. Establishment and continued use of cemeteries**

- (1) No person may, without the prior consent of the Municipality establish a private cemetery, and no proprietor of a private cemetery already in existence may, if the use of the cemetery was not previously authorised by the Municipality, continue to use the existing cemetery for burial purposes.
- (2) A person who wishes to apply for the Municipality's consent to establish a cemetery or use as cemetery as contemplated in subsection (1), must submit a written application to the Municipal Manager together with –
  - (a) a locality plan to a scale of not less than 1: 10 000 which shows –
    - (i) the position of the proposed cemetery or existing cemetery in relation to the boundaries of the land on which it is proposed to establish it or upon which it is situated;
    - (ii) the registered description of the site;
    - (iii) all streets, public places and privately-owned property within a distance of 100 metres of the site;
  - (b) a "block" plan to a scale of not less than 1: 500 showing the position of external boundaries, internal roads and paths, sub-

- divisions, grave sites, drainage and any buildings existing or proposed to be erected;
- (c) a plan and sections to a scale of not less than 1: 100 of any building existing or proposed to be erected, and which must in this case conform with the National Building Regulations and the Water Services and Sanitation By-laws of the Municipality;
- (d) a list of registers or records kept or proposed to be kept with reference to –
  - (i) identification of graves;
  - (ii) sale or transfer of grave sites; and
  - (iii) interments;
- (e) the full name and address of the proprietor;
- (f) particulars regarding the nature of the title under which the proprietor 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
- (g) a schedule of the burial fees proposed to be charged or actually in force.

(3) On receipt of an application the Municipal Manager must publish a notice in one or more newspapers circulating in its area stating the nature of the application and specifying a date, being not less than 30 days after the date of publication of the notice, by which objections to the granting of an application may be lodged with the Municipality.

(4) The Municipality may, upon receipt of the payment by the applicant of the prescribed fee and if satisfied after consideration of the application and any objections which may have been lodged that no interference with any public amenity, or nuisance or danger to the public health is likely to take place or arise, in writing grant consent for the establishment of the private cemetery or the continued use of the private cemetery.

(5) No departure from the plans as approved are permitted without the written prior approval of the Municipality.

(6) A person who contravenes a provision of subsection (1) or (5) commits an offence.

#### **58. Duties of Proprietors**

(1) The proprietor of a private cemetery, approved by the municipality, must –

- (a) comply with any conditions imposed by the Municipality;
- (b) keep a record which shows –
  - (i) the number of each grave site and the ownership of the site; and
  - (ii) the number of interments in each grave site and the name, age, gender, last known address, date and cause of death of the deceased;

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

## CHAPTER 11: MISCELLANEOUS

### 59. Authentication and service of order, notice or other document

- (1) An order, notice or other document requiring authentication by the Municipality is considered duly authenticated when signed by an official duly authorized to do so.
- (2) Any notice or other document that is served on a person in terms of this by-law, is regarded as having been served -
- (a) when it has been delivered to that person personally;
  - (b) when it has been left at that person's place of residence or business in the Republic with a person apparently over the age of sixteen years;
  - (c) when it has been posted by registered or certified mail to that person's last known residential or business address in the Republic and an acknowledgment of the posting thereof from the postal service is obtained;
  - (d) if that person's address in the Republic is unknown, when it

- has been served on that person's agent or representative in the Republic in the manner provided by paragraphs (a), (b) or (c);
- (e) if that person's address and agent or representative in the Republic is unknown, when it has been posted in a conspicuous place on the property or premises, if any, to which it relates; or
  - (f) in the event of a body corporate, when it has been delivered at the registered office of the business premises of such body corporate.
- (4) Service of a copy shall be deemed to be service of the original.
- (5) Any legal process is effectively and sufficiently served on the municipality when it is delivered to the municipal manager or a person in attendance at the municipal manager's office.

#### **60. Complaint**

A person wishing to lodge a complaint must lodge it in writing with the Municipal Manager.

#### **61. Notice of compliance and representations**

- (1) A notice of compliance served in terms of section 40 must state -
- (a) the name and residential and postal address, if either or both of these be known, of the person;
  - (b) the nature of the state of disrepair;
  - (c) in sufficient detail to enable compliance with the notice, the measures required to remedy the memorial work;
  - (d) that the person must within a specified time period take the measures to comply with the notice, to diligently continue with the measures, and to complete the measures before a specific date;
  - (e) that failure to comply with the requirements of the notice within the period contemplated in paragraph (d) is an offence;
  - (f) that written representations, as contemplated in subsection (3) may, within the time period stipulated under paragraph (d) above, be made to Municipality at a specified place.
- (2) The Municipality, when considering any measure or time period envisaged in subsections (1)(d) and (e), must have regard to -
- (a) the principles and objectives of this by-law;
  - (b) the state of disrepair;
  - (c) any measures proposed by the person on whom measures are to be imposed; and
  - (d) any other relevant factors.

- (3) A person may within the time period contemplated in paragraph (1)(f) make representations, in the form of a sworn statement or affirmation to Municipality at the place specified in the notice.
- (4) Representations not lodged within the time period will not be considered, except where the person has shown good cause and the Municipality condones the late lodging of the representations.
- (5) The Municipality may, on its own volition, conduct any further investigations to verify the facts if necessary, and the results of the investigation must be made available to the person, who must be given an opportunity of making a further response if he or she so wishes, and the Municipality must also consider the further response.
- (6) The Municipality must, after consideration of the representations and any responses received, make an order in writing and serve a copy of it on the person.
- (7) The order must -
- (a) set out the findings of Municipality;
  - (b) confirm, alter or set aside in whole or in part, the notice of compliance; and
  - (c) specify a period within which the person must comply with the order made by Municipality.
- (8) If the notice of compliance is confirmed, in whole or in part, or is altered but not set aside, Municipality will inform the person that he or she -
- (a) must discharge the obligations set out in the notice; or
  - (b) may elect to be tried in court.
- (9) If the person elects to be tried in court he or she must, within seven calendar days, notify the Municipality in writing of his or her intention to be so tried.
- (10) If the person does not elect to be tried in court, he or she must, within the prescribed manner and time discharge his or her obligations under the order.
- (11) Where there has been no compliance with the requirements of a notice, the Municipality may take any steps necessary to repair the monumental work and recover the costs in accordance with section 62.

## **62. Costs**

Should a person fail to take the measures required of him or her by notice, the Municipality may recover all costs incurred as a result of it acting in terms of paragraph 61(11) from the person.

## **63. Appeal**

A person whose rights are affected by a decision of the municipality may appeal against that decision by giving written notice of the appeal and the reasons therefore in terms of section 62 of the Local Government:

Municipal Systems Act, Act 32 of 2000 to the municipal manager within 21 days of the date of the notification of the decision.

**64. Charges**

Should a person fail to pay a prescribed fee, the Municipality may act in accordance with the provisions of its Customer Care and Revenue Management By-law.

**65. Penalties**

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

**66. Limitation of liability**

The Municipality is not liable for any damage or loss caused by the exercise or failure to exercise any power or the performance of any duty in good faith under this By-law.

**67. Exemptions**

- (1) Any person may by means of a written application, in which the reasons are given in full, apply to the municipality for exemption from any provision of this by-law.
- (2) The municipality may grant or refuse an application for exemption or impose conditions and it may alter or cancel any exemption or condition in an exemption.
- (3) An exemption does not take effect before the applicant has undertaken in writing to comply with all conditions imposed under subsection (2), however, if an activity is commenced before such undertaking has been submitted to the municipality, the exemption lapses.
- (4) If any condition of an exemption is not complied with, the exemption lapses immediately.

**68. Liaison forums in community**

- (1) The municipality may establish one or more liaison forums in a community for the purposes of –
  - (a) creating conditions for a local community to participate in the affairs of the municipality;
  - (b) encouraging a local community to participate in the affairs of the municipality; and
  - (c) promoting the burial or cremation of the dead in a dignified manner.

- (2) A liaison forum may consist of –
  - (a) a member of members of an interest group, or an affected person;
  - (b) a member or members of a community in whose immediate area a cemetery or crematorium exists;
  - (c) a designated official or officials of the municipality; and
  - (d) the councillor responsible for cemeteries.
- (3)
  - (a) The municipality may, when considering an application for consent, permit or exemption certificate in terms of these By-laws, where applicable, request the input of a liaison forum.
  - (b) A liaison forum or any person or persons contemplated in subsection (2) may, on own initiative, submit an input to the municipality for consideration.

**69. Revocation of by-laws**

The following by-laws are hereby repealed:

- (a) Any by-law previously promulgated by the municipality or any of the disestablished municipalities now incorporated into the municipality, in so far as it relates to any matter provided for in this by-law; and
- (b) Any by-law previously promulgated by the Cacadu District Municipality or any of its predecessors, in so far as it has been made applicable to the municipality by the authorisation for the execution of powers and functions in terms of section 84(3) of the Municipal Structures Act, 117 of 1998.

**70. Short title and commencement**

This By-law may be cited as the Funeral Parlours, Cemeteries and Crematoria By-law, and commences on the date of publication thereof in the Provincial Gazette.