

No. 281

KOUGA MUNICIPALITY: FUNERAL PARLOURS, CEMETERIES AND CREMATORIA BY-LAW

Under the provisions of section 156 of the Constitution of the Republic of South Africa, 1996, the Kouga Municipality, enacts as follows:-

Table of contents

1. Interpretation
2. Principles and objectives

CHAPTER 1: FUNERAL UNDERTAKERS' PREMISES

3. Applicable legislation

CHAPTER 2: GENERAL PROVISIONS RELATING TO CEMETERIES AND CREMATORIA

4. Appointment of caretaker
5. Hours of admission for public
6. Children
7. Keeping to path
8. Prohibited conduct within cemetery and crematorium
9. Right of interest in ground

CHAPTER 3: GENERAL PROVISIONS RELATING TO INTERMENT AND CREMATION

10. Consent required for interment and cremation
11. Interment and cremation times
12. Register
13. Indigent and destitute persons
14. Number of corpses in one coffin

CHAPTER 4: INTERMENT

15. Dimensions of graves and apertures
16. Depth of grate
17. Reservation of grave
18. Child's coffin too large
19. Construction material of coffin
20. Number of bodies in one grave
21. Coffin to be covered with earth
22. Religious ceremony
23. Hearse and vehicle at cemetery
24. Instruction of caretaker
25. Music inside cemetery
26. Interment attended by more than fifty people
27. Occupation of chapel or shelter

28. Number on grave

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

29. Disturbance of mortal remains
30. Time of exhumation
31. Re-opening of grave

CHAPTER 6: CARE OF GRAVES

32. Shrubs and flowers
33. Care of grave

CHAPTER 7: CREMATION

34. Receptacles and ashes
35. Burial and exhumation of ashes
36. Cremation certificate

CHAPTER 8: ERECTION AND MAINTENANCE OF MEMORIAL WORK

37. Consent of Municipality
38. Requirements for erection of memorial work
39. Position, movement and removal of memorial work
40. Repairs to memorial work
41. Supervision of work
42. Damaging of memorial work
43. Conveying of memorial work
44. Vehicle and tools
45. Complying with Municipality's directions
46. Times for bringing in material and doing work
47. Inclement weather
48. Production of written permission
49. Memorial work in crematorium

CHAPTER 9: SECTIONS IN CEMETERY

50. Municipality may establish sections
51. Monumental section
52. Garden of Remembrance
53. Heroes Acre
54. Aesthetic section
55. Panoramic section

CHAPTER 10: PRIVATE CEMETERIES

56. By-laws apply
57. Establishment and continued use of cemeteries

58. Duties of Proprietors

CHAPTER 11: MISCELLANEOUS

- 59. Authentication and service of order, notice or other document
 - 60. Complaint
 - 61. Notice of compliance and representations
 - 62. Costs
 - 63. Appeal
 - 64. Charges
 - 65. Penalties
 - 66. Limitation of liability
 - 67. Exemptions
 - 68. Liaison forums in community
 - 69. Revocation of by-laws
 - 70. Short title and commencement
- Schedules

1. Interpretation

- (1) In this by-law, unless the context otherwise indicates –
- “**adult**” means a deceased person over the age of 12 years and where the word is used to define a corpse, a deceased person whose coffin will fit into the grave opening prescribed for adults in section 15;
 - “**aesthetic section**” means a cemetery or section of a cemetery which has been set aside by the Municipality wherein only headstones may be erected;
 - “**approved**” means approved by the Municipality;
 - “**ashes**” means the cremated remains of a corpse;
 - “**berm**” means a concrete base laid at the head of a grave and on which a memorial is erected;
 - “**burial**” means interment in earth, a sepulchre or tomb;
 - “**burial order**” means an order issued in terms of the Births and Deaths Registration Act, 1992 (Act 51 of 1992);
 - “**caretaker**” means the official whom the Municipality appoints from time to time in a supervisory capacity with regard to a cemetery or crematorium;
 - “**cemetery**” means a land or part of a land within the municipal area set aside by the Municipality as a cemetery;
 - “**child**” means a person who is not an adult, and where the word is used to define a corpse, means a deceased person whose coffin will fit into the grave opening prescribed for children in section 18, and includes the corpse of a stillborn child and a foetus;
 - “**columbarium**” means a the place set aside in the basement of a crematorium or chapel containing rows of niches for the purpose of placing receptacles containing the ashes of cremated corpses therein;
 - “**corpse**” means the remains of a deceased person and includes a still-born child and foetus;

- “**cremation**” means the process whereby a corpse is disposed of by fire;
- “**crematorium**” means a crematorium as defined in section 1 of the Ordinance and includes the buildings in which a ceremony is conducted and the cremation carried out;
- “**cremated remains**” means all recoverable ashes after the cremation;
- “**exhumation**” means the removal of a corpse from its grave;
- “**funeral undertaker's premises**” has the meaning assigned to it in regulation 1 of the Regulations;
- “**garden of remembrance**” means a section of a cemetery or crematorium set aside for the erection of memorial work or a wall of remembrance;
- “**grave**” means a piece of land, within a cemetery or heritage site, excavated for the burial of a corpse and includes the headstone, number or marker of and a structure on or associated with the grave;
- “**heroes acre**” means an area of land set aside for the burial of a hero;
- “**medical officer of health**” means the officer appointed by Municipality or any other person acting in the capacity of the medical officer of health;
- “**memorial section**” means a section of a cemetery set aside for the erection of memorials;
- “**memorial work**” means any headstone, monument, plaque, other work or object, erected or intended to be erected in a cemetery or crematorium to commemorate a deceased person, and includes a kerb demarcating a grave, and a slab covering a grave;
- “**municipality**” means the Municipality of Kouga established in terms of Section 12 of the Municipal Structures Act, 117 of 1998, and includes any political structure, political office bearer, councillor, duly authorised agent or any employee acting in connection with this by-law by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office bearer, councillor, agent or employee;
- “**niche**” means a compartment in a columbarium or wall of remembrance for the placing of ashes;
- “**ordinance**” means the Crematorium Ordinance, 1965 (Ordinance No. 18 of 1965);
- “**panoramic section**” means a section in a cemetery set aside by the Municipality where memorial work is restricted to a plaque or memorial slab;
- “**prescribed**” means prescribed by the Municipality;
- “**prescribed fee**” means a fee determined by the Municipality in its Customer Care and Revenue Management By-law;
- “**private cemetery**” means a cemetery of which is used as a cemetery but which has not been set aside as such by the Municipality;
- “**Regulations**” means the Funeral Undertakers' Premises, made under sections 33 and 39 of the Health Act, 1977 (Act 63 of 1977), and published as Government Notice No. 237 of 8 February 1985;
- “**tomb**” means an above ground burial vault;

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

2. Principles and objectives

The purpose of this By-law is to control funeral undertaker's premises, to make provision for the allocation of land for the purposes of the burial of human remains, to develop and maintain existing cemeteries, to permit its residents to dispose of a corpse by cremation and to provide space allowing the preservation of the remains of a cremation in a dignified manner.

CHAPTER 1: FUNERAL UNDERTAKERS' PREMISES

3. Applicable legislation

The National Building Regulations and Building Standards Act, 1977 apply in respect of funeral undertaker's premises.

CHAPTER 2: GENERAL PROVISIONS RELATING TO CEMETERIES AND CREMATORIA

4. Appointment of caretaker

- (1) The Municipality may appoint a caretaker for each cemetery or crematorium to control and administer the cemetery or crematorium.
- (2) The caretaker must take into account the customs of the deceased person and the people responsible for the burial or cremation and must accommodate these within the framework of this by-law.

5. Hours of admission for public

- (1) Every cemetery is open to the public during the following hours: 8:00 and 17:00, however, if it is in the interest of the public, the Municipality may close to the public a cemetery or crematorium or part thereof for such periods as the Municipality deems necessary.
- (2) No person, excluding workers or persons with permission, may be in or remain in a cemetery or crematorium or part thereof before or after the hours mentioned in sub-section (1) or during a period when it is closed to the public.
- (3) A person who contravenes subsection (2) commits an offence.

6. Children

- (1) No child under 12 years of age may enter a cemetery or crematorium unless he or she is under the care of a responsible person.
- (2) A person who allows a child to enter a cemetery or crematorium in contravention of subsection (1), commits an offence.

7. Keeping to path

Except for purposes permitted by this by-law, a person may only use a path provided in the cemetery, and failure to do so constitutes an offence.

8. Prohibited conduct within cemetery and crematorium

- (1) No person may in a cemetery or crematorium -
- (a) cause a nuisance;
 - (b) ride an animal or cycle without permission of the caretaker
 - (c) allow an animal to wander;
 - (d) plant, cut, pick or remove a tree, plant, shrub or flower without the permission of the caretaker;
 - (e) hold or take part in a demonstration;
 - (f) interrupt during the performance of his or her duties an official, workman or labourer employed by the Municipality;
 - (g) obstruct, resist or oppose the caretaker in the course of his or her duty or refuse to comply with an order or request which the caretaker is entitled under this by-law to make;
 - (h) mark, draw, scribble, erect an advertisement or object on a wall, building, fence, gate, memorial work or other structure;
 - (i) use water for any form of gardening without the permission of the caretaker;
 - (j) plant trees, flowers or shrubs on or between graves;
 - (k) leave any rubbish, soil, stone, debris or litter;
 - (l) in any way damage or deface any part of a cemetery, crematorium, grave or memorial work.
 - (m) enter or leave except by an entrance provided for the purpose;
 - (n) solicit any business, order or exhibit, or distribute or leave a tract, business card or advertisement;
 - (o) treat a grave or memorial work with disrespect, such as climbing or sitting on a grave or memorial work;
 - (p) enter an office, building or fenced place, except in connection with lawful business;
 - (q) with the exception of a blind person, bring an animal; and
 - (r) expose a corpse or a part thereof
- (2) A person who contravenes a provision of subsection (1) commits an offence.

9. Right of interest in ground

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

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

CHAPTER 3: GENERAL PROVISIONS RELATING TO INTERMENT AND CREMATION

10. Consent required for interment and cremation

- (1) No person may inter a corpse in a cemetery or have it cremated in a crematorium without the prior written consent of the caretaker.
- (2) A person who wishes to obtain the consent as contemplated in subsection (1) must submit to the caretaker an application in writing together with –
 - (a) the prescribed fee;
 - (b) a death certificate;
 - (c) a burial order issued in terms of the Births and Deaths Registration Act, 1992,and the caretaker may not approve the application unless all of the above requirements are met.
- (3) An application must be submitted to the caretaker, in respect of –
 - (a) an interment where the Municipality is responsible for the digging of the grave, not later than 15:00 on the day before the intended interment or, where the grave exceeds the standard size, not later than 15:00 two days before the intended interment; and
 - (b) a cremation, not later than 15:00 on the day before the intended cremation.
- (4) Should any alteration be made in the day or hour previously fixed for an interment or cremation, or an interment or cremation be cancelled, in the instance where the Municipality is responsible for the digging of a grave, notice of the alteration must be given to the caretaker at least six hours before the time fixed for the interment or cremation, and no refund will be made on monies paid in respect of the opening of an existing grave.
- (5) The application contemplated in subsection (2) must be signed by the nearest surviving relative of the deceased person, however, if the caretaker is satisfied that the signature of the nearest surviving relative cannot be obtained timeously, or for any other valid reason, he or she may grant an application signed by any other interested person.

(6) A person who disposes of a corpse in contravention of subsection (1) or who contravenes subsection (5) commits an offence.

11. Interment and cremation times

(1) An interment and cremation may take place between 08:00 and 17:00.

(2) Despite the provisions of subsection (1), the caretaker may permit interment or cremation outside the times contemplated in subsection (1) in which case the Municipality may levy an additional fee.

(3) A person who inters or cremates a corpse in contravention of the provisions of subsection (1) commits an offence.

12. Register

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

- (a) The particulars of the person who requested the interment or cremation;
- (b) the particulars of the deceased person such as the name, address, and identification number;
- (c) the date of the interment or cremation; and
- (d) in the instance of an interment, the number of the grave.

13. Indigent and destitute persons

(1) A person may apply to the Municipality for the burial or cremation of the corpse of an indigent person and must provide proof that the deceased was granted the status as indigent person by the Municipality and the Municipality may decide if the corpse is to be buried or cremated.

(2) Subject to the provisions of section 48 of the Health Act, 1977, and section 10 of the Human Tissue Act, 1983, the corpse of a destitute person or an unclaimed corpse may be buried or cremated according to conditions determined by the Municipality.

(3) Where a corpse of an indigent person is cremated, the caretaker of the crematorium must retain the ashes, and should the ashes not be claimed, bury the ashes in a grave.

14. Number of corpses in one coffin

(1) Subject to the provisions of subsection (2), only one corpse may be contained in a coffin.

(2) More than one corpse may be contained in one coffin if the consent of the caretaker has been obtained and the prescribed fee has been paid, in the case of –

- (a) a mother and child who died during childbirth; or
- (b) family members who –
 - (i) died together; or

- (ii) died a short while after each other, and the burial or cremation of the first dying member has not yet taken place.
- (3) A person who contravenes a provision of subsection (1) or who fails to obtain the consent as contemplated in subsection (2) commits an offence.

CHAPTER 4: INTERMENT

15. Dimensions of graves and apertures

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

16. Depth of grave

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

17. Reservation of grave

- (1) A person desiring to reserve the use of a grave must submit an application to the caretaker and pay the prescribed fee
- (2) A restriction may be placed on the reservation of graves, and reservations will only be accepted for adult graves in the monumental section as stated in subsection (3).
- (3) In the event of an interment of a husband or wife in the monumental section, only one additional adjoining grave may be reserved for the survivor.
- (4) In the event of an interment of a husband or wife in the aesthetic section, an additional adjoining grave may not be reserved for the survivor, however, subject to the provisions of section 14(2), the interment of the survivor may be permitted in the same grave.

(5) Where another person, other than the applicant, has mistakenly used a grave, the caretaker must allocate another grave in the cemetery to the applicant.

18. Child's coffin too large

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

19. Construction material of coffin

(1) A coffin interred in a grave must be constructed of wood or biodegradable material.

(2) A person who interrs a coffin in contravention of subsection (1) commits an offence.

20. Number of bodies in one grave

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

21. Coffin to be covered with earth

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

22. Religious ceremony

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

23. Hearse and vehicle at cemetery

(1) No hearse or other vehicle may enter a cemetery without the prior permission of the caretaker having been obtained.

(2) No hearse or other vehicle may enter a cemetery other than by the routes set aside for that purpose.

(3) A person who contravenes subsections (1) or (2) commits an offence.

24. Instruction of caretaker

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

25. Music inside cemetery

(1) Singing and music is allowed in a cemetery, in which case the prior permission of the caretaker must be obtained.

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

26. Interment attended by more than fifty people

Where it is probable that more than 50 people will be present at an interment, the municipality may require that the caretaker be notified.

27. Occupation of chapel or shelter

(1) No person may for the purpose of a funeral occupy a chapel or shelter in a cemetery for more than 45 minutes.

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

28. Number on grave

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

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

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

29. Disturbance of mortal remains

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

- (a) no corpse or mortal remains or ground surrounding it in a cemetery may be disturbed;
- (b) no grave may be re-opened; and
- (c) no corpse may be removed from a grave, without the written consent of the Municipality.

(2) The prescribed fee for exhumation must be paid to the municipality at least two days before the date fixed for the exhumation or removal of the corpse.

(3) A person who contravenes subsections (1) commits an offence.

30. Time of exhumation

(1) No person may exhume or cause a corpse to be exhumed during such time as the cemetery is open to the public.

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

31. Re-opening of grave

(1) No person may re-open a grave for the purpose of interring a second corpse in the same grave unless –

- (a) the grave was initially made deeper for this purpose;
- (b) if not made deeper, then only after 10 years have passed since the interment of the first corpse;

- (c) for purposes of burial of a receptacle containing ashes, the depth does not exceed 300 mm;
 - (d) the consent contemplated in section 29(1) has been obtained; and
 - (e) the fee prescribed by the Municipality has been paid.
- (2) A person who contravenes a provision of subsection (1)(a) to (d) commits an offence.
- (3) The Municipality has the right to re-open a grave for the purpose of establishing, by reading the inscription on the coffin, the identity of the corpse.

CHAPTER 6: CARE OF GRAVES

32. Shrubs and flowers

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

33. Care of grave

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

CHAPTER 7: CREMATION

34. Receptacles and ashes

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