

Mbizana, South Africa

## Funeral Undertaker's Premises

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# Mbizana South Africa

## Funeral Undertaker's Premises By-law, 2017

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Commenced on 24 April 2017

*[This is the version of this document from 24 April 2017 and includes any amendments published up to 1 March 2023.]*

The Municipal Manager of Mbizana Local Municipality hereby, in terms of section 13(a) in conjunction with section 75 (1) of the Municipal Systems Act, 2000 ([Act No. 32 of 2000](#)), publishes the Funeral Undertaker's Premises By-Law for the Mbizana Local Municipality, approved by the Council, that come into operation on the date of publication thereof.

WHEREAS the Council of the Municipality is vested with legislative authority in terms of the [Constitution of the Republic of South Africa, 1996](#);

AND WHEREAS the Council of the Municipality in the exercise of its functions has the right to regulate the establishment, conduct and control of funeral undertaker's premises in areas under its jurisdiction;

NOW THEREFORE be it enacted by the Council as follows:

### 1. Definitions

In these by-laws, any words used in the masculine gender include the feminine, the singular includes the plural and vice versa and unless the context otherwise indicates –

"**the Act**" means the Health Act, 1977 ([Act No. 63 of 1977](#));

"**adequately ventilated and illuminated**" means adequately ventilated and illuminated as laid down in the National Building Regulations and Standards Act, 1977 ([Act No. 103 of 1977](#));

"**approved**" means approved by the Municipality;

"**certificate of competence**" means a certificate contemplated in section 6 of these by-laws;

"**environmental health practitioner**" means an official or person contracted by the Municipality to provide environmental health inspectorate and control services to it and who is registered as such in terms of the Health Professions Council of South Africa and who has been designated in terms of section 31 of the Act to perform such duties as may be required to be performed by such official in terms of these by-laws;

"**existing funeral undertaker's premises**" means existing funeral undertaker's premises that are legally used as such on the date of commencement of these by-laws;

"**funeral undertaker's premises**" means premises that are used or will be used for the preparation of corpses;

"**holder**" means the person in whose name a certificate of competence has been issued;

"**Municipality**" means the Municipality of the established in terms of Section 12 of the Municipal Structures [Act, 117 of 1998](#), Provincial Notice 487 dated 22 September 2000, and includes any duly authorised political structure, political office bearer or official thereof and, where the text so requires also includes an environmental health practitioner.

"**new funeral undertaker's premises**" means funeral undertaker's premises that are put into use as such after the date of commencement of these by-laws;

"**nuisance**" means any condition, thing, act or omission which is offensive or injurious to health or which tends to prejudice the safety, good order, comfort or health of the local community or any member thereof;

"**preparation**" means any action aimed at the preparation of a corpse for a funeral or for cremation, export or other disposal and includes the embalming of such corpse for the said purposes and "prepare" and any word derived from these words has a corresponding meaning;

"**pure water**" means clean and clear water that contains no e.coli organisms per 100 ml and is free from any substance in concentrations that are detrimental to human health;

"**rodent-proof**" means rodent-proof as laid down in the regulations regarding the Prevention of Rodent Infestation and the Storage of Grain, Forage etc in Urban and Rural areas of the Republic of South Africa promulgated by Government Notice R. 1411 of 23 September 1966;

"**thermometer**" means an apparatus which can give the temperature readings referred to in these by-laws, the combined accuracy of such a thermometer and its temperature-sensitive sensor being approximately 0,5°C.

## **2. Corpses to be prepared only at Funeral Undertaker's Premises in respect of which a certificate of competence has been issued**

- (1) Subject to the provisions of these by-laws, no person may prepare any corpse except on funeral undertaker's premises in respect of which a certificate of competence has been issued in terms of these by-laws and is in effect.
- (2) Subject to the provisions of subsection (b), existing funeral undertaker's premises may, for a period of six months after the date of commencement of these by-laws, be used for the preparation of corpses without a certificate of competence being issued or being in effect in respect of such premises.
- (3) The Municipality may, if it is satisfied that there is a nuisance present on funeral undertaker's premises, issue a written order to the owner or operator of such premises requiring him to cease all activities connected with the preparation of corpses therein until such time as the nuisance referred to in such order has been eliminated or abated.

## **3. Exemptions**

- (1) The Municipality may in writing and by way of the issue of an appropriate certificate, exempt any person from compliance with all or any of the provisions of these by-laws where, in its opinion, non-compliance does not or will not create a nuisance.
- (2) An exemption is subject to such conditions and valid for such period as the Municipality may prescribe and stipulate in the certificate of exemption issued in terms of subsection (1).

## **4. Savings**

These by-laws are not applicable to –

- (a) mortuaries and hospitals under the control of the State or a provincial administration;
- (b) any natural person who is not in the service of a funeral undertaker and who does not, either directly or indirectly, undertake or arrange funerals but only prepares corpses; provided that such preparation does not take place on fixed premises that are used by such person specifically for such purpose and provided further that, for the purpose of these by-laws, preparation does not include the embalming of or incisions into a corpse.

## 5. Application for the issue of transfer of a certificate of competence

- (1) An applicant for a certificate of competence in respect of new funeral undertaker's premises must, not less than 30 days before submitting his application to the Municipality –
  - (a) cause a notice in the official language or languages prescribed or required by the Municipality to be published in a newspaper or newspapers generally circulating in the municipal area –
    - (i) stating that he intends making application to the Municipality in terms of these by-laws for the issue of a certificate of competence to enable him to establish a funeral undertaker's premises on property;
    - (ii) fully describing the premises; and
    - (iii) calling upon any person who will be or likely to be affected by such funeral undertaker's premises to lodge his objection, if any, together with substantiated reasons, against such contemplated application with the Municipality in writing within 21 days of the date of publication of such notice; and
  - (b) serve by registered post or by personal delivery a copy of such notice on the owner and occupier of every property adjacent to or likely to be affected by the proposal.
- (2) An application for the issue of or transfer of a certificate of competence must be made in writing by the applicant or his authorised representative to the Municipality on such form as the Municipality may require and must be accompanied by a copy of the notice referred to in subsection (1) and such fee as may be prescribed by the Municipality.
- (3) An application for the issue of a certificate of competence referred to in subsection (a) (i) must be accompanied by –
  - (a) a description of the premises and the location thereof, including equipment, storage facilities, preparation areas and toilet facilities;
  - (b) a complete ground plan of the proposed construction or of existing buildings on a scale of 1: 100;
  - (c) a plan of the premises on which north is shown indicating which adjacent premises are already occupied by the applicant or other persons and for what purpose such premises are being utilised or are to be utilised;
  - (d) particulars of any person other than the holder or any of his employees who prepares or will prepare corpses on the premises;
  - (e) a contingency plan for the storage of corpses in the event of refrigeration or cold room breakdown;
  - (f) a cleansing and disinfection programme.
- (4) The Municipality, when considering the issuing of or transferring of a certificate of competence, may request from the applicant or any other person any such further information as it may deem necessary to enable it to consider the application concerned.
- (5) The Municipality may not consider any application for the issue of or the transfer of a certificate of competence unless a complete inspection of the premises concerned has been carried out by an environmental health practitioner and his report on such inspection, including his recommendation on such issue or transfer, as the case may be, is in the possession of the Municipality.

## **6. Issue or transfer of certificate of competence**

- (1) An environmental health practitioner must consider an application for the issue of or transfer of a certificate of competence contemplated in section 5(a)(i) and issue a report and recommendations in that regard.
- (2) The Municipality must consider the report contemplated in subsection (1), including the recommendations and any objections to the use of premises as funeral undertaker's premises.
- (3) The Municipality must issue a certificate of competence in the name of the holder if it is satisfied that the premises concerned –
  - (a) complies with all requirements laid down in these by-laws;
  - (b) is suitable in all respects for the preparation of corpses; and
  - (c) will not be offensive to any occupants of premises in the immediate vicinity of such premises.
- (4) A certificate of competence must be in such form as the Municipality may determine.
- (5) Subject to section 7, an existing certificate of competence may be transferred by endorsement to a new holder.

## **7. Validity and transfer of certificate of competence**

- (1) On endorsement by the Municipality, a certificate of competence must be transferred from an exiting holder to a new holder and such certificate is valid from the date on which it was issued until it is revoked or suspended in terms of these by-laws.
- (2) The provisions of subsection (1) do not apply in respect of a provisional certificate of competence.

## **8. Issue of provisional certificate of competence**

- (1) A provisional certificate of competence must be issued by the Municipality to an existing funeral undertaker's premises in respect of which an application for a certificate of competence has been applied for where the premises in respect of which such application relates do not comply with these by-laws.
- (2) A certificate of competence in respect of funeral undertaker's premises must be issued for a maximum period of 36 months to enable the applicant to alter such premises to comply with the provisions of these by-laws.
- (3) In all other cases, the Municipality may issue a certificate of competence subject to such conditions as it may determine in general or in each specific case; provided that the Municipality must satisfy itself that the use of such funeral undertaker's premises does not and will not create a nuisance.

## **9. Duties of holder**

- (1) The holder must immediately inform the Municipality in writing if there are any changes in the particulars supplied to it in the application for the certificate of competence concerned.
- (2) The holder of a certificate of competence may not dispose of the funeral undertaker's premises concerned without such transfer first having been authorised by the Municipality in terms of these by-laws.

## 10. Suspension or Revocation of a certificate of competence or provisional certificate of competence

- (1) The Municipality may, after an enquiry contemplated in section (11) and on the strength of an adverse inspection report and recommendation by an environmental health practitioner contemplated in subsection (2), suspend or revoke a certificate of competence or provisional certificate of competence.
- (2) A report contemplated in subsection (1) must allege that there are reasonable grounds to suspect that –
  - (a) a funeral undertaker's premises are being used in a manner that is hazardous to health or that conditions entailing a hazard to health have been or are being created on such premises; or
  - (b) such premises are being used in contravention of the provisions of the Act or the conditions to which such provisional certificate of competence is subject.
- (3) On receipt of the report contemplated in subsection (1) and subsection (4), the Municipality may serve a written notice on the holder or the person in charge of such premises in which such holder or person is instructed to furnish reasons, at a place and a time specified in such notice, why such certificate should not be dealt with in terms of section 11(12).
- (4) Notwithstanding the provisions of subsection (1), the Municipality may, pending an inquiry contemplated in subsection (1), suspend a certificate of competence or provisional certificate of competence immediately on the strength of a report, whether by a medical officer or an environmental health practitioner in the service of the State or of the Municipality, stating that the hazard referred to in subsection (2) is a nuisance and recommending such suspension.
- (5) A notice referred to in subsection (3) must set out such particulars as are reasonably adequate to inform the holder concerned why the withdrawal of the certificate is contemplated and must be served on him by the Municipality not less than 21 days prior to the date specified in such note for the holding of an inquiry.

## 11. Procedure at enquiries

- (1) The holder may appear personally at an enquiry convened under these by-laws or be represented thereat by any of his employees specially authorised by him for such purpose in writing, or by his legal representative, or may submit written statements or arguments in the form of an affidavit to the Municipality for consideration.
- (2) If the holder appears at the inquiry, or if the holder does not appear at the inquiry but the Municipality is satisfied that the notice referred to in section 10(3) has been properly served on him, the Municipality must inquire into the matter mentioned in such notice.
- (3) The Municipality may call and interrogate or re-interrogate any person present at such inquiry and hear such evidence as may be adduced by or on behalf of the holder and may cross examine any person giving evidence for or on behalf of the holder.
- (4) The holder, his authorised employee or his legal representative may interrogate any witness called for or on behalf of the holder at such inquiry and may cross-examine any other witness testifying thereat.
- (5) The Municipality may –
  - (a) instruct any witness at such inquiry to testify on oath or on affirmation; and
  - (b) administer an oath to or accept an affirmation from any person appearing before it to testify or to submit a book, document or object.

- (6) In regard to the giving of evidence or the submission of a book, document or object at such inquiry, the right of privilege which is applicable to a witness testifying in a criminal case in a magistrate's court or summonsed to submit a book, document or object is applicable.
- (7) The Municipality may, in its discretion, postpone or adjourn such inquiry for such period or periods as it may deem fit; provided that, where a suspension has been instituted in terms of subsection (4), such postponement or adjournment must be for not more than 14 days.
- (8) The Municipality must cause a record of the proceedings at the inquiry to be kept in such manner as it may determine.
- (9) A record of the proceedings contemplated in subsection (8) must be accessible to the holder and copies thereof may be made by him or his representative on such conditions regarding time and place as the municipality may determine.
- (10) The record of the inquiry must be kept for a period of 2 years in a place where it is protected against fire and theft.
- (11) Upon conclusion of the inquiry, the Municipality must deliberate in committee.
- (12) If it appears to the Municipality that –
  - (a) the funeral undertaker's premises concerned are being used in such a way as to create a nuisance or that conditions constituting a nuisance have been or are being created on the funeral undertaker's premises concerned;
  - (b) the premises concerned are being used in contravention of the provisions of the Act or any conditions to which the certificate of competence or provisional certificate of competence concerned is subject, it may, in order to put an end to the matter about which a complaint has been received, make such order as contemplated in subsection (13).
- (13) In relation to conditions referred to in section 10(2), the Municipality may –
  - (a) where in its opinion the health hazard in question is a real hazard, make an order withdrawing the certificate of competence or provisional certificate of competence concerned; and
  - (b) in other cases, make an order requiring the future use of such premises to be so regulated so as to correct without delay the matter complained about.
- (14) In relation to an irregularity referred to in section 10(4), the Municipality may make an order –
  - (a) suspending the certificate of competence or provisional certificate of competence concerned for such period as it may determine, and inform the holder that, if the conditions complained about as mentioned in such order are not corrected to its satisfaction within such period of suspension, the certificate concerned will be revoked without further notice; or
  - (b) requiring the future use of such premises to be so regulated so as to correct without delay the matter complained about.
- (15) An order made in terms of subsection (13) and subsection (14) must be –
  - (a) issued in writing;
  - (b) signed by the Municipal Manager of the Municipality; and
  - (c) served on the holder.

## 12. The effect of the suspension or withdrawal of certification

- (1) The person on whom an order contemplated in section 11(13) and section 11(14) has been served must deal with them and with the certificate of competence or provisional certificate of competence concerned, in cases where such certificate has been revoked, in the manner laid down in such order.

- (2) The suspension or revocation of a certificate of competence or provisional certificate of competence in terms of these by-laws has the effect that, from the date of coming into operation of the order of suspension or revocation –
  - (a) no preparation of any corpse may be performed on the premises concerned;
  - (b) no corpse may be received for preparation on the premises concerned; and
  - (c) no corpse may be preserved on the premises concerned; and
- (3) From the date of coming into operation of the order of suspension or revocation, every corpse must, after consultation with the holder, forthwith be removed to a mortuary under the control of the State, a provincial administration, the Municipality or any other funeral undertaker's premises designated by the Municipality; provided that, where refrigeration facilities for corpses on the premises concerned are, in the opinion of the Municipality, suitable for such preservation, this subsection is not applicable and the said order must not be so construed as to restrict any act relating to the funeral undertaker's profession, excluding the preparation and receiving of a corpse.
- (4) Where the Municipality is of the opinion that a condition that gave rise to the revocation of a certificate as contemplated in these by-laws was corrected after such revocation, it must, on written application made by or on behalf of the holder, repeal such revocation by endorsement on the certificate concerned.

### **13. Appeal**

- (1) A person whose rights are affected by a decision of an official may appeal against that decision by giving written notice of the appeal and reasons to the Municipal Manager within 21 days of the date of the notification of the decision.
- (2) The Municipal Manager must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.
- (3) When the appeal is against a decision taken by –
  - (a) a staff member other than the Municipal Manager, the Municipal Manager is the appeal authority;
  - (b) the Municipal Manager, the Executive Committee is the appeal authority; or
  - (c) a political structure or political officer bearer, or a Councillor Council is the appeal authority.
- (4) The appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable time.

### **14. Requirements relating to Funeral Undertaker's Premises**

- (1) Provision for at least the following must be made on funeral undertaker's premises:
  - (a) A preparation room for the preparation of corpses.
  - (b) Change-rooms, separate for each sex, for the use of the employees employed at such premises.
  - (c) Refrigeration facilities for the refrigeration of corpses.
  - (d) Facilities for the washing and cleansing of utensils and equipment inside the building.
  - (e) Facilities for the cleansing of vehicles on such premises.
  - (f) Facilities for the loading and unloading of corpses as contemplated in subsection (6).

- (2) No room on funeral undertaker's premises may be used for any purpose other than the purpose for which it is intended and no act other than an act related to the said purpose may occur in such room.
- (3) The preparation room –
  - (a) must be so designed as to –
    - (i) be separated from all other rooms on the premises and as not to communicate directly with any office or salesroom; provided that where a preparation room on existing funeral undertaker's premises so communicates, the entrance thereto must be so concealed that the interior thereof is completely out of the sight of any person in such office or salesroom.
    - (ii) enable obnoxious odours and vapours to be adequately treated; and
    - (iii) be sufficiently ventilated and lighted;
  - (b) must have a floor –
    - (i) covering an area of not less than 16 m<sup>2</sup> for the first table of the kind referred to in subsection (e) and 8 m<sup>2</sup> for each additional such table;
    - (ii) constructed of concrete or similar waterproof material with a smooth non slippery surface that is easy to clean, and sloped at an angle to ensure that any run-off will drain into an approved disposal system; and
    - (iii) which, if it is replaced or laid after the date of commencement of these by-laws, must be provided with half-round filling where it meets the walls;
  - (c) must have walls the inner surfaces of which have a smooth finish and are covered with a light-coloured washable paint or other approved, suitable, smooth, waterproof, light-coloured and washable material;
  - (d) must be provided with a ceiling not less than 2,4 m above the floor level, which ceiling must be dust-proof and painted with a light-coloured washable paint;
  - (e) must contain not less than one table of stainless steel or glazed earthenware or other approved material, equipped with a raised rim on the outside, a tap with cold running water to which a flexible pipe can be connected and a drainage opening connected to an approved disposal system;
  - (f) must contain not less than one wash-basin for each such table, made of stainless steel or other approved material, with a working surface of the same material, taps with hot and cold running water and a drainage opening permanently connected to an approved disposal system, and provided with disposable towels, a nailbrush and soap;
  - (g) must have not less than one tap with running water to which a flexible pipe, long enough to reach all corners of such room, can be connected for cleaning the interior surfaces;
  - (h) must have door openings that are not less than 0,82 m in width and 2,00 m in height so that corpses can be taken into and out of such room without any difficulty.
- (4) Each such change-room must contain at least the following:
  - (a) one hand-basin with hot and cold running water for every six employees or part of this number;
  - (b) disposable towels, soap, nailbrushes and disinfectant; and
  - (c) not less than one latrine for every 15 male employees or part of this number and not less than one latrine for every 15 female employees or part of this number employed at the funeral undertaker's premises concerned; provided that, where a separate urinal for men

forms part of such facilities, one latrine plus one separate urinal must be permissible for every 30 men or part of this number.

- (5) Refrigeration facilities such as refrigerators or cold chambers must be installed in or within easy reach of such preparation room for the keeping of corpses.
- (6) Where refrigerators are provided, they must be –
  - (i) made of a material that does not absorb moisture;
  - (ii) provided with removable trays; and
  - (iii) so designed as to drain properly and be easy to clean.
- (7) The surface temperature of any corpse may be no higher than 5°C within three hours of it being received on the premises and no higher than 15°C during preparation.
- (8) An accurate thermometer must be provided at the refrigerator or cold chamber and must be operational at all times;
- (9) Where cold chambers are provided, they must –
  - (i) comply with subsection (3) (a) (ii), (b) (ii), (c), (d) and (h);
  - (ii) be provided with shelves manufactured from a material that does not absorb moisture and that is easy to clean; and
  - (iii) corpses may not be stored on top of each other and must be stored individually on the trays or shelves.
- (10) The cleansing and loading and unloading facilities must consist of a paved area, screened from public view, with a drainage system into a gulley connected to an approved disposal system.
- (11) The loading and unloading of corpses and the cleansing of vehicles may not take place anywhere except in the area contemplated in subsection (10).
- (12) The funeral undertaker's premises must be rodent-proof.

## 15. Hygiene

- (1) All solid refuse on the premises of a funeral undertaking must be kept in corrosion-resistant containers with tight-fitting lids and must be dealt with in accordance with the applicable by-laws and requirements of the Municipality.
- (2) Every holder of a certificate of competence relating to funeral undertaker's premises must –
  - (a) provide or cause to be provided clean protective over-clothes consisting of surgical gloves, gumboots, plastic aprons so designed that the front hangs over the top of the gumboots, face masks and linen overcoats to all employees and all other persons involved in post mortems;
  - (b) keep such premises free of insects or cause them to be so kept;
  - (c) cause all working areas or surfaces at such premises where corpses are prepared to be cleaned immediately after the preparation of any corpse;
  - (d) cause all equipment used for the preparation of corpses to be washed and disinfected immediately after use;
  - (e) daily cause all protective over-clothes that have been used to be washed, cleansed and disinfected on the premises; and
  - (f) if a corpse has been transported without a moisture-proof covering, cause the loading space of the vehicle concerned to be washed and disinfected after such corpse has been removed.

- (3) All employees and all other persons involved in post mortems must, at all times when so involved, wear such clothing;

## 16. Penalties

Any person who contravenes or fails to comply with a provision of these by-laws, a notice issued in terms thereof or a condition imposed under these by-laws, irrespective of whether such contravention or failure has been declared as an offence elsewhere in these by-laws, is guilty of an offence and liable upon conviction to –

- (a) a fine not exceeding R10 000 or imprisonment for a period not exceeding 6 (six) months or either such fine or such imprisonment or both such fine and such imprisonment;
- (b) in the case of a continuing offence, an additional fine of R250 or an additional period of imprisonment of 1 (one) day or either such additional fine or such additional imprisonment or both such additional fine and imprisonment for each day on which such offence is continued; and
- (c) a further amount equal to any costs and expenses found by the court to have been incurred by the Municipality as a result of such contravention or failure.

## 17. Repeal of By-Law

- (1) Any by-law adopted by the Municipality or a municipality now forming an administrative unit of the Municipality and relating to any matter regulated by these by-laws are, from date of promulgation of these by-laws, hereby repealed.
- (2) Any permission obtained, right granted, condition imposed, activity permitted or anything done under a repealed law, is deemed to have been obtained, granted, imposed, permitted or done under the corresponding provision (if any) of these by-laws, as the case may be.