Bergrivier, South Africa

Cemeteries and Crematoria By-law, 2024

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Bergrivier
South Africa

Cemeteries and Crematoria By-law, 2024

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

1. Interpretation

(1) In this by-law, unless the context otherwise indicates—

"**adult**" means a deceased person over the age of 16 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 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 grave 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 or his or her delegate;

"**cemetery**" means a land or part of a land within the municipal area set aside by the municipality for the interment of corpses;

"**ceremony**" means any ceremony relating to the interment of a corpse;

"**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 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 or by any other means that yields a comparable result;

"**crematorium**" means a place where corpses are cremated;

"**cremated remains**" means all recoverable ashes after the cremation;

"**exhumation**" means the removal of a corpse from its grave;

"**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;

"**interment**" means any method used for disposing of a corpse;

"**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 Bergrivier Municipality and includes any political structure, political office-bearer, duly authorised agent thereof, or a service provider fulfilling a responsibility under this by-law assigned to it in terms of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) or any other law, as the case may be, or any employee thereof, acting in connection with this by-law by virtue of a power vested in the municipality and delegated to such political structure, political office bearer, agent or employee;

"**niche**" means a compartment in a columbarium or wall of remembrance for the placing of ashes;

"**open section**" means a section in a cemetery set aside by the municipality where memorial work may be erected at a later stage at the prescribed tariff;

"**prescribed**" means prescribed by the municipality;

"**prescribed tariff**" means a fee set by the municipality in terms of its Customer Care and Revenue Management By-law;

"**private cemetery**" means a cemetery which is used as a cemetery but which has not been set aside as such by the municipality;

"**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 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, burial or any other approved method and to provide space allowing for the preservation of the remains of a cremation in a dignified manner.

Chapter 1
Establishment of cemeteries

3. Establishment of cemeteries

(1) The municipality may set apart any piece of land within its area of jurisdiction for the purposes of a cemetery.

(2) The municipality may, within such a cemetery, provide separate areas for exclusive use by different religious or cultural groups, taking into consideration the customs or religious conventions of such groups.

(3) The establishment of a cemetery as contemplated in subsection (1) must be preceded by a process of public participation in terms of the municipality's public participation policy.

4. Alternatives to burial

The municipality may, if compelled to do so by environmental considerations, or the shortage of land for burial purposes, and subject to the provisions of any other law regarding the rights of a person, request that a corpse be disposed of by any other accepted method other than burial.

Chapter 2
General provisions relating to places of interment

5. Appointment of caretaker

(1) The municipality may appoint a caretaker for each place of interment or crematorium to control and administer the place of interment.

(2) The caretaker must take into account the customs of the deceased person and the people responsible for the interment and must accommodate these within the framework of this by-law.

6. Hours of admission for public

(1) Places of interment are normally open to the public during the hours determined by the municipality, but if it is in the interest of the public, the municipality may close a place of interment or part thereof for such periods as may be necessary.

(2) No person, excluding workers or persons with permission, may be in or remain in a place of interment before or after the hours mentioned in sub-section (1) or during a period when it is closed to the public.

(3) The municipality may display the hours that every place of interment is open to the public on a notice board at each place of interment.

7. Keeping to paths

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

8. Prohibited conduct within cemeteries and crematoria

(1) No person may in a cemetery or crematorium:

a. commit or cause a nuisance;

b. enter with a vehicle, motorbike or bicycle except with the approval of the caretaker;

c. with the exception of a blind person making use of a guide dog, bring into or allow an animal to wander inside such cemetery;

d. plant, uproot, 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 a funeral, or an official or workman employed by the municipality during the performance of his or her duties;

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 to make under this by-law;

h. mark, draw, scribble, erect an advertisement or object on a wall, building, fence, gate, memorial work or other erection;

i. use water for any form of gardening without the permission of the caretaker;

j. leave or dump any rubbish, soil, stone, debris or litter;

k. in any way damage, destroy or deface a grave, memorial, wall, building, fence, railing, path or other construction or any part thereof;

l. solicit any business, order or exhibit, or distribute or leave a tract, business card or advertisement;

m. treat a grave or memorial work with disrespect, such as climbing or sitting on a grave or memorial work;

n. enter an office, building or fenced-place except in connection with lawful business;

o. expose a corpse or a part thereof;

p. exceed the prescribed speed limit;

q. allow or cause any animal to enter, with the exception of a caretaker living on site and who is keeping pets with the prior approval of the municipality;

r. bring in any alcohol or consume any alcohol; or

s. be in possession of any fire-arms or traditional weapons except in the case of a police or military funeral.

(2) A person who contravenes any of the provisions of subsection (1) commits an offence.

(3) The municipality may, in its full and exclusive discretion, impound an animal found in any cemetery or crematorium.

9. Right of interest in ground

(1) No person shall acquire any right to or interest in any ground or grave in a cemetery other than such rights or interests as may be obtainable under this by-law.

(2) The municipality may, subject to the provisions of section 17, and on payment of the prescribed fee, reserve a grave plot in a cemetery.

Chapter 3
General provisions relating to interment

10. Consent required

(1) No person may dispose of a corpse in any other manner than that prescribed by the municipality, and a person who wishes to dispose of a corpse must obtain the written consent of the municipality and must comply with any requirements set by the municipality.

(2) A person who wishes to obtain the consent as contemplated in subsection (1) must submit to the Head: Facilities Management an application in writing together with:

a. proof of payment of the prescribed tariff;

b. a death certificate;

c. a burial order issued in terms of the Births and Deaths Registration Act, 1992; and

d. if the application relates to a corpse in which was inserted radioactive material or a pacemaker, a statement indicating whether the said material or pacemaker was removed from the corpse;

and the Head: Facilities Management may not approve the application unless all of the above requirements are met.

(3) An application must be submitted to the Head: Facilities Management, in respect of:

a. an interment allowing sufficient time to prepare the place of interment; and

b. practices that need to be adhered to by certain religious groups other than those prescribed by this by-law.

(4) Should any alteration be made in the day or hour previously fixed for an interment, or an interment 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 Head: Facilities Management at least eight hours before the time fixed for the interment, and no refund will be made on monies paid in respect of the opening of an existing grave.

(5) An application contemplated in subsection (2) must be signed by a surviving relative of the deceased person. However, if the Head: Facilities Management is satisfied that the signature of a surviving relative cannot be obtained timeously, or for any other valid reason, he or she may, in his or her discretion, grant an application signed by any other interested person.

(6) The municipality reserves the right to:

a. inspect the contents of a coffin before interment; and

b. decide which method of interment may be used.

(7) The municipality may refuse a person, including a funeral undertaker, to inter a corpse if documentation required by the municipality has not been submitted.

11. Interment times

(1) An interment may take place between 09:00 and 16:00 daily.

(2) A person contemplated in section 10(2) will be allocated an interment time by the Head: Facilities Management, and interments that are not undertaken within the times allocated will result in such interment being postponed, until such time as an interment time is available without inconveniencing other interments taking place within the time allocated.

(3) Despite the provisions of subsection (1), the Head: Facilities Management to whom an application is made may, in the case of emergency, permit interment outside the times contemplated in subsection (1), in which case an additional fee as prescribed by the municipality from time to time may be payable.

(4) A person who inters a corpse in contravention of the provisions of subsection (1) or (2) commits an offence.

12. Register

The Head: Facilities Management must keep a record of all interments, and the record must contain:

a. The particulars of the person who requested the interment;

b. The particulars of the deceased person whose corpse is to be interred, such as the name, address, and identification number;

c. The date of the interment; and

d. The number of the grave in which the corpse is interred.

13. Interment of destitute persons

(1) The removal and interment of a destitute person who has died within the area of jurisdiction of the municipality is the responsibility of

a. the municipality if:

(i) the destitute person's corpse has not been claimed by a competent person; or

(ii) a competent person has undertaken to inter the corpse of the destitute person but has failed to do so;

b. a hospital or other institution in terms of the provisions of section 48 of the Health Act, 1977 (Act 63 of 1977), if the destitute person died in that hospital or other institution.

(2) In terms of section 48(2A) (a) of the Health Act, 1977 (Act 63 of 1977), the municipality may direct that the corpse of a destitute person be interred in any manner it sees fit instead of being buried.

(3) The corpses of more than one destitute person may be buried in one grave.

(4) Where a corpse contemplated in subsection (2) is cremated, the caretaker of the crematorium must retain the ashes, and should the ashes not be claimed, such caretaker must bury the ashes in an area set aside for that purpose.

14. Number of corpses in one coffin

(1) Subject to the provisions of subsection (2) and section 13(3), 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 Head: Facilities Management has been obtained and the prescribed tariff 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 interment 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
Burial 27

15. Dimensions of graves

(1) The standard dimensions of a grave for an adult person are as follows:

- Length: 2200mm;
- Width: 900mm;
- Depth: 2000mm.

(2) Any person requiring a grave of a size larger than the standard dimensions must, when submitting an application in terms of section 10, specify the measurements of the coffin, and pay the tariff prescribed by the municipality from time to time for the enlarging of a grave.

(3) Any person who digs a grave in contravention of the dimensions stipulated in subsection (1) commits an offence.

16. Burial

(1) The lid of the coffin, or where one coffin has been buried on top of another coffin, the lid of the top coffin, may not be less than 1200mm from the natural ground level.

(2) A person responsible for the burial must ensure that surrounding property is not damaged and must prevent graves from caving in.

(3) Soil mounds on a grave may be removed by the municipality one month after the burial.

(4) On completion of a burial, it is the duty of the undertakers, or the person who dug the grave, to clear the surrounding areas (pathways and graves) of all soil, debris, etc.

(5) A person, who buries a coffin in contravention of the provisions of subsection (1) or who contravenes subsections (2) or (4) commits an offence.

17. Reservation of grave plots

(1) A person desiring to reserve the use of a grave plot must submit an application to the caretaker and must pay the prescribed tariff.

(2) A restriction is placed on the reservation of grave plots, and reservations shall only be accepted for adult grave plots in the monumental section as set out in subsection (3).

(3) Only one adjoining grave plot may be reserved for a surviving family member for a period of 20 years, against payment of the tariff prescribed by the municipality, subject to the provisions of section 20, and no refund will be considered if the right provided by the reservation is not exercised.

(4) Where another person, other than the applicant, has mistakenly used a reserved grave, the caretaker must allocate another grave within the cemetery to the applicant, and the applicant has no claim whatsoever against the municipality for any inconvenience or losses of whatsoever nature.

18. Child's grave

The dimensions of a child's grave will be the same as that of an adult and more than one child may be interred in the same grave, provided that there is at least 200 mm of soil between the coffins and provided further that there is at least 1200 mm of soil between the top coffin and the natural ground level.

19. Construction material of coffin

(1) A coffin interred in a grave must be constructed of bio-degradable material.

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

20. Number of bodies in one grave

Subject to the provisions of sections 14(2), 16(1) and 18, more than one corpse may be interred in a single grave.

21. Hearse and vehicle at cemetery

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

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

22. Music inside cemetery

Only sacred singing is allowed in a cemetery, except in the case of a police or military funeral, in which case the prior permission of the caretaker must be obtained.

23. Number on grave

No person may bury a corpse in a grave on which a peg marked with the number of the grave has not been fixed, if such a marking system is in use at that particular cemetery.

Chapter 5
Exhumation of corpse and re-opening of grave

24. Disturbance of mortal remains

(1) Subject to permission from the municipality, or the provisions of an exhumation order given in terms of section 3(4) of the Inquests Act, 1959 (Act 58 of 1959) or any other provision of any Act relating to the exhumation of corpses, no person may without an Environmental Health Practitioner being present:

(a) disturb a corpse or mortal remains or ground surrounding it in a cemetery; or

(b) remove a corpse from a grave.

(2) Any person requesting for a corpse to be exhumed or a grave to be opened must provide the municipality with an affidavit certifying that he or she has the authority to do so, and such an affidavit must be accompanied by any supporting documentation that may be required in terms of any Act relating to the exhumation of corpses.

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

(4) A person who contravenes the provisions of subsection (1) commits an offence.

25. Time of exhumation

No person may exhume or cause a corpse to be exhumed at any other time than that specified by the municipality.

26. Re-opening of grave

(1) No person may re-open a grave for the purpose of interring a second corpse in the same grave without permission of the municipality.

(2) When considering an application contemplated in subsection (1), the municipality may impose such conditions it may deem necessary.

(3) The municipality may re-open a grave for the purpose of establishing the identity of the corpse.

(4) In the event of a police investigation, a corpse may be exhumed on receipt of a written request from the investigating officer, provided that the provisions of the Inquests Act, 1959 (Act 58 of 1959) have been complied with.

(5) A person who contravenes subsection (1) or any condition imposed in terms of subsection (2) commits an offence.

Chapter 6
Care of graves

27. Shrubs and flowers

The municipality may, at any time prune, cut down, dig up or remove any shrub, plant, flower, foliage, wreath or adornment, including tombstones and memorial works, if it presents a danger to people or property, if it becomes unsightly, is damaged or wilted, or if it causes damage to municipal infrastructure such as fences, roads or pathways, or to other graves and tombstones or memorial works.

28. Care of grave

(1) The responsibility for the maintenance and upkeep of a grave is that of the person contemplated in section 10(1), and save as to the extent described in this by-law, the municipality does not accept any responsibility for damages to, or the maintenance, upkeep or safeguarding of any grave.

(2) The municipality may, on application by a person contemplated in section 10(1), and upon payment of a tariff prescribed by the municipality, undertake to keep any grave in order for any period.

Chapter 7
Cremation

29. Receptacles and ashes

(1) Unless the ashes are to be buried by the municipality, the person contemplated in section 10(1) must provide a receptacle, on which the full name of the deceased person is indicated, for receiving the ashes.

(2) The quantity of ashes to be kept, as indicated on the application form by the person contemplated in subsection (1) must, after the cremation, be collected by him or her, and should he or she fail to collect the ashes, the ashes will be dealt with in terms of section 30(1)

(3) Where a receptacle is intended to be placed in a niche in the columbarium,

(a) it must:

1. be made of wood or stone; and

2. 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.

30. Burial and exhumation of ashes

(1) In the absence of an arrangement between the caretaker and the person contemplated in section 29 regarding the ashes, the caretaker may bury or scatter the ashes in a garden of remembrance, where such a 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

III. memorial work.

(3) A person must obtain the consent of the caretaker and an immediate family member, if the applicant is not an immediate family member, 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 tariff:

1. give written consent to the applicant to bury, exhume or scatter the ashes; and

2. 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 have the following measurements;

- 610mm in length,
- 610mm in width, and
- 610mm in depth.

31. Cremation certificate

(1) On completion of a cremation, the caretaker must supply a cremation certificate to the person contemplated in section 29(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

32. Consent of municipality

(1) No person may bring any memorial work into a cemetery or erect, alter, paint, clean, renovate, decorate, remove or otherwise interfere with any memorial work or cut any inscription thereon without the written consent of the municipality.

(2) When erecting a memorial work, the following must be submitted:

(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 the municipality may impose such conditions as it deems necessary.

(4) No person may bring into a cemetery any material for the purpose of constructing therewith any memorial work on any grave unless:

(a) the provisions of subsection (1) to (3) have been complied with; and

(b) proof of payment in respect of work to be carried out has been submitted.

(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 a workmanlike manner, in figures 30mm in size.

(7) A person who contravenes a provision of subsection (1), (4)(a) or (6) commits an offence.

33. 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. all work must be effected according to the conditions contemplated in section 32(3);

c. during erection or construction, proceedings must be of such a nature that no damage be caused to any structure, grave or property, and care must be taken that no offence is given, or disruption is caused for other cemetery users;

d. where a memorial has a pedestal on ground level or on the berm, the pedestal may not be

i) more than 900mm in length, 250mm in width and 250mm in height for a single grave, and;

ii) not more than 2700mm in length, 250mm in width, and 250mm in height for a double grave;

e. with the next of kin's permission, the name of the manufacturer/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 100mm; and

f. tiles in the Garden of Remembrance must be no bigger than 240mm x 300mm and must be manufactured out of non-corrosive metal;

g. all unused material, after the completion of the work, must be removed, the adjoining areas are to be left neat and clean and any damage caused must be repaired at the cost of the person responsible for such damage and, should the responsible person fail to effect such repair, after due notice, the municipality will undertake the remedial work at the cost of the person who erected the memorial work.

(2) A person who does not comply with a provision in subsection (1) commits an offence.

34. Position, movement and removal of memorial work

(1) No person may erect a memorial work on a grave before the position in which such memorial work is to be placed has been indicated by the municipality.

(2) Should the condition 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 of the alteration from the person who erected the memorial work.

(3) A memorial work placed, erected, constructed, built, altered, decorated, painted or otherwise dealt with in a cemetery in such manner that any provisions of this by-law are contravened thereby, may be removed, after due notice, by the municipality at the cost of the person who erected the memorial work, without payment of any compensation or damages for any losses suffered by such person.

35. Repairs to memorial work

(1) Should the person contemplated in section 32(1), allow a memorial work to fall into such a state of disrepair that it may cause danger or deface the cemetery, the municipality may cause a notice of compliance, as contemplated in section 56, to be served on such a person.

(2) If the person contemplated in subsection (1) fails to comply with the notice of compliance, the municipality may demolish or remove the memorial work and recover the cost for demolition or removal from the person served with the notice of compliance.

(3) If the person contemplated in subsection (1) cannot be traced, the municipality may demolish or remove the memorial work.

36. Supervision of work

A person engaged upon any work in a cemetery must effect the work under the supervision of the caretaker appointed by the municipality, and failure to do so constitutes an offence.

37. Conveying of memorial work

No person may convey any stone, brick or memorial work or a portion thereof within a cemetery upon a vehicle or truck, which may cause damage to the paths or grounds or infrastructure of the cemetery.

38. Vehicle and tools

Every person engaged in work upon a grave or plot must ensure that the vehicles, tools or appliances be of such a kind as not to contravene this by-law and by no means block any road or pathways, and prior approval to bring such vehicles, tools or appliances onto the premises must be obtained from the caretaker of the cemetery.

39. Times for bringing in material and doing work

(1) No person may a bring memorial work or material into or do any work, other than the dismantling of memorial work for burial purposes, within a cemetery except during official working hours of the municipal employees on Mondays to Fridays.

(2) No person may engage in work which may disturb a funeral in progress, and this prohibition applies for any funeral, and for the entire duration of such a funeral.

40. Production of written permission

A person charged with the duty to perform work, or is on his or her way to or from work within the cemetery, must, upon demand from the municipality, produce the written consent issued to him or her in terms of section 32.

41. 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 prior consent of the caretaker, 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 250mm in width, 305mm in length, and 25mm 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) if erected on a grave, may not exceed 1.2m in height, 610mm in length, and 610mm in width.

42. Commonwealth War Graves

The graves of people who fell in conflict, whose graves are cared for or maintained by the Commonwealth War Graves Commission in terms of the Commonwealth War Graves Act, 1992, (Act 8 of 1992), or the South African Heritage Resources Agency in terms of the National Heritage Resources Act, 1999 (Act 25 of 1999), or by any other recognized body, or by any foreign government, may, on application to the municipality, be exempted from the requirements of this chapter.

Chapter 9
Sections in cemeteries

43. Municipality may establish sections

(1) The municipality may establish one or more of the following sections in a cemetery:

a. memorial section;

b. open section;

c. aesthetic section;

d. berm section;

e. Heroes Acre; and

f. Garden of Remembrance.

44. Memorial section

(1) Memorial work may be erected upon the whole surface of a grave subject to the provisions of section 33, and provided that the following measurements may not be exceeded:

a. Height: 2000mm.

b. Width: 900mm in case of a single grave, and 700mm in case of a double grave.

c. Thickness: 250mm.

(2) Flowers, foliage, wreaths or any adornment may be placed upon the berm only of graves, except in the case of graves which have not yet been levelled.

(3) A person commits an offence if he or she:

a. exceeds the measurements stipulated in subsection (1); or

b. contravenes section (2).

45. Open section

This section allows for the purchase of the grave only, and at a later stage may request permission to erect memorial work on payment of the prescribed tariff.

46. 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 maximum dimensions of a headstone are as follow:

a. Adult's grave:

- Single grave: 900mm in length by 260mm in width.
- Double grave: 2200mm in length by 260mm in width.

b. Child's grave:

- Single grave: 610mm in length by 260mm in width.
- Double grave: 1200mm in length by 260mm in width.

(3) No headstone may exceed a height of 1500mm above the berm.

(4) Any person who contravenes a provision of this section commits an offence.

47. Berm section

(1) A concrete base is laid at the head of a grave and on which a memorial is erected;

(2) The following measurements must be adhered to:

a. base not to exceed 1200mm wide and 250mm deep

b. horizontally on ground level; and

c. on a concrete foundation

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

48. Garden of remembrance

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

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

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

49. Heroes' Acre

(1) A Heroes' Acre consists of a structure erected for this purpose and contains no corpse but is a memorial only.

(2) No person may erect such structure without the written approval of the municipality and the municipality decides upon the merits of such matters.

(3) The size of the structure must be 500mm x 350mm and must be manufactured from a non-corrodible metal or masonry upon which, *inter alia*, the contribution made by the person in question is mentioned.

(4) A person who inters 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.

Chapter 10
Private cemeteries

50. By-laws apply

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

51. Establishment and continued use of cemeteries

(1) No person may, without the municipality's prior written consent, establish a private cemetery, and no proprietor of a private cemetery already in existence may, if the use of the cemetery was not previously authorized 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 as contemplated in subsection (1), must submit to the municipality a written application, together with:

a. A locality plan to a scale of not less than 1:10 000 which shows:

- 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, as the case may be;
- the registered description of the site; and
- all streets, public places and privately-owned property within a distance of 100 meters 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:

- Identification of graves
- Sale of grave sites, transfer of grave sites; and
- 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 changed or actually in force.

(3) On receipt of an application, the municipality must cause to be inserted in one or more newspapers circulating in the municipal area, a notice stating the nature of the application and specifying the date, being not less than 14 days after the date of publication of such notice, by which objections to the granting of an application may be lodged with the municipality.

(4) The municipality may, upon receipt of the payment of the prescribed tariff, 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 as a result, grant written consent for the establishment of the proposed private cemetery or the continued use of the private cemetery, in accordance with the plans submitted and subject to any variation or amendment which it may require and to any conditions which it may prescribe.

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

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

52. Duties of proprietor

(1) The proprietor of a private cemetery for which the consent of the municipality has been obtained must:

a. Comply with:

- Any special conditions prescribed by the municipality; and
- The relevant provisions of this by-law and any other applicable law;

b. Keep a record which shows:

- The number of each grave site and the ownership of the site; and
- 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 order and condition and clear of weeds and overgrowth.

d. Provide for the identification of grave sites by subdividing the cemetery into blocks, each containing a number of graves or grave sites, and:

- each block must be demarcated by means of signs showing the number and location of each block;
- the graves or grave sites in each block must be separately numbered by means of durable number plates; and
- 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 of each month of all burials, which sets out the:

- name, last known address, age, gender, date and cause of death of each deceased person interred in the cemetery;
- name of the medical practitioner who issued the death certificate;
- authority which issued the burial order;
- block and grave site number;
- date of burial; and
- particulars of a change in the identity of the caretaker or of a person newly appointment;

g. render an annual return to the Municipal Manager on or before 30 June of each year, which contains a detailed list of the names and addresses of all trustees, committee members or persons controlling the place of interment; and

h. appoint a caretaker to manage the cemetery and to keep the records.

(2) The owner of a private cemetery or private property may refuse permission to have a corpse interred in the cemetery.

(3) A person who contravenes a provision of subsection (1) commits an offence.

Chapter 11
Disused cemeteries

53. Use of disused cemeteries

(1) Notwithstanding any provision in this by-law, and subject to the provisions of subsection (4), the municipality may use any cemetery or portion thereof, which has been closed or disused for a period of not less than 20 years, and of which the municipality is the cemetery authority, for such purpose as will not desecrate the ground, any human remains or any memorials in such cemetery.

(2) The municipality may, subject to the provisions of subsection (4), remove to another cemetery the human remains, memorials and other structures from a cemetery of which it is the cemetery authority, which has been closed or disused for a period of not less than 20 years and which has been approved for other usage.

(3) All rights possessed or enjoyed by any person in respect of a cemetery contemplated in subsection (2) shall thereupon cease.

(4) Before acting in terms of subsections (1) and (2) the municipality must give notice of its intention to do so in terms of its public participation policy.

Chapter 12
Miscellaneous

54. Authentication and service of order, notice or other document

(1) An order, notice or other document requiring authentication must be signed by the municipality.

(2) Any notice or other document that is served on a person in terms of this by-law, is regarded as having been served when it is served in accordance with section 115(1) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000).

(3) Service of a copy shall be deemed to be service of the original.

(4) Any legal process-documents are 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.

55. Complaint

A person wishing to lodge a complaint must lodge such complaint in writing with the municipality.

56. Notice of compliance and representations

(1) A notice of compliance 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 the 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 must consider the representations and any response thereto by an authorised official or any other person, if there be such a response.

(6) The municipality may, on its own volition, conduct any further investigations to verify the facts, if necessary, and the results of the investigations 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.

(7) The municipality must, after consideration of the representations and response, if there be such a response, make an order in writing and serve a copy of it on the person.

(8) The order must:

a) set out the findings of the 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 the municipality.

(9) If the notice of compliance is confirmed, in whole or in part, or is altered but not set aside, the 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.

(10) If the person elects to be tried in court, he or she must, within seven calendar days, notify the municipality of his or her intention to be so tried.

(11) 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.

57. Costs

Should a person fails to take the measures required of him or her by notice, the municipality may recover from such person all cost incurred as a result of it acting in terms of section 56.

58. Appeal

A person whose rights are affected by a decision delegated by the municipality may appeal against that decision by giving written notice of the appeal and the reasons therefor 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.

59. Tariffs

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

60. Offences and penalties

A person who contravenes any provision or fails to comply with any provision of this by-law commits an offense and shall on conviction be liable to:

a. a fine or imprisonment, or either such fine or imprisonment or to both such fine and such imprisonment and,

b. in the case of a continuing offence, to an additional fine or an additional period of imprisonment or to such additional imprisonment without the option of a fine, or to 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 result of such contravention or failure.

61. 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:

a. grant an exemption in writing and the conditions in terms of which, if any, and the period for which such exemption is granted must be stipulated therein;

b. alter or cancel any exemption or condition in an exemption; or

c. refuse to grant an exemption.

(3) An exemption does not take effect before the applicant has undertaken in writing to comply with all conditions imposed by the municipality 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.

62. Liaison forums in community

(1) The municipality may establish one or more liaison forums in a community for the purposes of developing and maintaining cemeteries and crematoria and promoting the achievement of a healthy environment.

(2) A liaison forum may consist of:

(a) member or 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 this by-law, request the input of a liaison forum.

(b) A liaison forum or any person or persons contemplated in subsection (2) may, on their own initiative, submit an input to the municipality for consideration.

63. Conflict with other legislation

In the event of any conflict between any provision of this by-law and National and Provincial legislation, standards, policies or guidelines, the National and Provincial legislation, standards, policies or guidelines shall prevail.

64. Revocation of by-laws

The provision 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, and insofar as it has been made applicable to the municipality by the authorization for the execution of powers and functions in terms of section 84(3) of the Local Government: Municipal Structures Act, Act 117 of 1998.

65. Short title and commencement

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