

Swartland, South Africa

Cemetery

Legislation as at 19 September 2003

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Swartland South Africa

Cemetery By-law, 2003

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Commenced on 19 September 2003

*[This is the version of this document from 19 September 2003
and includes any amendments published up to 11 August 2023.]*

[The provisions of this by-law have no headings]

1.

In this by-law:—

"caretaker" means a person or official appointed by the Municipality to be in charge of and to exercise control in a cemetery;

"cemetery" means a piece of land duly set aside by the municipality for burials, either within or outside the area of the municipality;

"grave" means a demarcated plot for the burial of a body in a cemetery; and

"municipality" means the Swartland Municipality;

2.

The Municipality may set aside any portion of a cemetery for the burial of the deceased of any group or other body or community; provided that —

- (a) "religious group" shall not be construed as being a denomination, and
- (b) such setting aside shall not entitle any person to be buried in any particular place in a cemetery.

3.

- (1) The municipality may sell or otherwise dispose of the right of burial in plots on such conditions as it may determine from time to time, and shall issue the person thus acquiring such right with a certificate setting out the conditions attaching to such acquisition.
- (2) The holder of a right of burial shall not dispose of such right except with the written permission of the municipality, and such holder or his next of kin shall not permit any other person who has not been approved by the municipality to be buried in the plot in respect of which such right exists.

4.

- (1) No person shall bury a body in a cemetery —
 - (a) except under the authority of a written permit which may be issued by the caretaker; or
 - (b) otherwise than in accordance with the conditions specified in such permit.
- (2) An application for the permit referred to in subsection (1) shall be accompanied by the burial order issued in accordance with the Births and Deaths Registration Act, 1992 ([Act 51 of 1992](#)), and shall contain such information as may be required by the caretaker.

5.

Except with the permission of the caretaker who shall record the circumstances under which such permission is granted, no person shall bury a body in a cemetery during the hours between sunset and sunrise.

6.

No person shall —

- (a) bury a body, unless the grave is of sufficient depth so that the top of the body, or, if contained in a coffin or container, the top of the coffin or container is not less than 1 050 mm below the surface of the ground when the grave has been filled up;
- (b) bury more than one body in a grave, unless the grave has been dug to a sufficient depth so that subsection (a) may be complied with and so that the first body or, if such body is in a coffin or container, such coffin or container may be covered with 100 mm of reinforced concrete or 300 mm of soil when the second body is buried, or
- (c) remove a body from a grave in order to enlarge such grave.

7.

- (1) The standard measurements for burial plots shall be determined by the Municipality.
- (2) The standard measurements for graves are as follows:
 - (a) Adults:
Length: 2 200 mm
Width: 1 200 mm
Depth: 1 800 mm
 - (b) Children:
Length: 1 350 mm
Width: 600 mm
Depth: 1 500 mm

8.

- (1) No person shall open a grave or exhume or cause a body to be exhumed from a grave —
 - (a) except under the authority of a written permit which may be issued by the municipality;
 - (b) otherwise than in accordance with the conditions specified in such permit;
- (2) Whenever the municipality deems it advisable that a body be removed from the grave, it may, after consultation, if possible, with any near relative of such deceased person and, with due regard to any other legislation in this regard, remove such body to another grave.

9.

- (1) No person shall erect or place any kerb, tombstone, monument, railings or fence or any ornamentation upon a grave —
 - (a) unless authorised to do so in terms of a written permit issued by the Municipality;
 - (b) otherwise than in accordance with the conditions set out in such permit, or

- (c) in such a manner as to exceed the boundaries of a burial plot.
- (2) The size (outer dimension) of any erections on burial plots shall not exceed the following measurements:
 - (a) Adults:
 - (i) Single burial plot: 2 500 mm × 1 050 mm
 - (ii) Double burial plot: the size of two single burial plots
 - (iii) Family burial plot: the appropriate multiple of a single burial plot
 - (iv) Width of kerb: 150 mm
 - (v) Tombstones shall not be higher than 1 600 mm above the surface of the ground.
 - (b) Children:
 - (i) Single burial plot: 1 500 × 1 000 mm
 - (ii) Width of kerb: 150 mm
 - (iii) Tombstones shall not be higher than 1 200 mm above the surface of the ground.
- (3) An application for a permit referred to in subsection (1) shall contain such details as may be required by the municipality in respect of the erection concerned and the inscription to be placed thereon, and the municipality may refuse to issue such permit if, in its opinion, such erection is likely to be of poor craftsmanship or quality or is likely in any way to disfigure a cemetery or is calculated to hurt or offend the feelings of the public.

10.

No person shall —

- (a) use any portion of a cemetery for the cutting, dressing and manufacturing of tombstones, monuments, railings, kerbs or other grave fittings except with the permission of the municipality or otherwise than in accordance with the conditions determined by the municipality;
- (b) carry out any work in connection with any kerb, tombstone, monument, railings or fence on or round a grave or bring any materials into a cemetery for the purposes of such work, except during the following hours: Mondays to Saturdays: sunrise to sunset, or
- (c) at any time leave any building sand, stones, builder's rubble, soil, rubbish, or other debris in the cemetery.

11.

- (1) Whenever the person who erected a memorial work in a cemetery allows it to fall into such state of disrepair as in the opinion of the municipality constitutes a danger or a disfigurement in the cemetery, the municipality may by written notice require him to effect such repairs as may be specified in such notice, and if his address is unknown such notice may be published in a newspaper circulating within the area of the municipality.
- (2) In the event of the required repairs not being effected within three months from the service or publication of such notice the municipality may itself effect the repairs or remove the memorial work without paying compensation and may recover the expense of such repair or removal from such person.

12.

- (1) The holder of the right of burial in a plot in a cemetery shall keep that plot and the monuments, tombstones or other erections thereon in good order and repair.
- (2) The municipality may undertake the upkeep of graves at the prescribed charges.
- (3) No person shall undertake the upkeep of graves in a cemetery except with the written consent of the municipality.

13.

- (1) No person shall –
 - (a) plant a tree or shrub on a grave site without the permission of the caretaker; or
 - (b) when cleaning a grave plot, deposit the material cleared from the grave, in the cemetery at a place other than that provided for such purpose.
- (2) The caretaker or his authorised assistant may prune, cut down, dig up or remove any shrub, plant or flower in a cemetery if such is in his opinion unsightly.

14.

No person shall –

- (a) enter or leave a cemetery except by the proper gates;
- (b) sit, stand or climb upon or over a memorial work, gate, wall, fence or building in a cemetery;
- (c) drive a hearse in a cemetery except upon the carriage ways provided for that purpose;
- (d) enter a cemetery –
 - (i) with a bicycle; or
 - (ii) with any other vehicle without the permission of the caretaker;
- (e) conduct a religious ceremony or service according to the rites of any denomination in that part of a cemetery set aside for members of any other denomination;
- (f) expose or convey a body in an unseemly manner in a street, cemetery or other public place;
- (g) mark, draw, scribble or erect an advertisement upon, or in any way deface a wall, building, fence, gate, memorial work or other erection in a cemetery;
- (h) pick flowers in a cemetery;
- (i) smoke in a cemetery; or
- (j) bring an animal into a cemetery;
- (k) hold a demonstration or participate in such demonstration in a cemetery;
- (l) create or allow to be created a nuisance in a cemetery; nor shall any person disrupt or allow to be disrupted any funeral proceedings in a cemetery, or
- (m) discharge any firearm in a cemetery, except as a salute of a military funeral.

15.

The charges payable in terms of [section 3\(1\)](#), as well as all other charges payable for burials, exhumations, reinterments or any other services rendered by the municipality in a cemetery or in connection with a funeral, shall from time to time be fixed by the municipality by resolution.

16.

Any person who contravenes any provision of this by-law or disregards or fails to comply with a lawful instruction from the caretaker shall be guilty of an offence and liable upon conviction to a penalty not exceeding –

- (1) a fine of one thousand Rand or imprisonment for a period of six months or either such fine or such imprisonment or both such fine and such imprisonment;
- (2) in the case of a continuing offence, an additional fine of fifty Rands or an additional period of imprisonment of ten days 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
- (3) 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.