



## LOCAL GOVERNMENT NOTICE

### BY-LAW RELATING TO CEMETERIES AND CREMATORIA

The Municipal Manager hereby publishes, in terms of Section 13 of the Local Government : Municipal Systems Act, 2000 [Act No. 32 of 2000], read with Section 162 of the Constitution of the Republic of South Africa Act, 1996 [Act No. 108 of 1996], the By-law Relating to Cemeteries and Crematoria.

#### Purpose of By-law

The purpose of this by-law is to promote the establishment, conduct and control of cemeteries and crematoria serving the area falling within the municipal boundaries of the Municipality of Ngqushwa.

### CHAPTER 1

#### DEFINITIONS

**1 Definitions** - In this by-law, words used in the masculine gender include the feminine, the singular includes the plural and vice versa and unless the context otherwise indicates -

**'adult'** where the word is used to describe a body, means any deceased person over the age of 12 whose coffin will fit into the grave opening prescribed for adults in terms of this by-law;

**'authorised official'** means an official of the municipality who has been authorised by it to administer, implement and enforce the provisions of this by-law;

**'body'** means the dead body of a human being and includes the body of a still-born child and any human remains;

**'burial authority'** means any board of trustees appointed for the management of a cemetery or a crematorium as envisaged by the Cremation Ordinance No. 6 of 1926 or similar national or provincial legislation and includes any municipal council having the powers and duties of a board of trustees;

**'burial order'** means an order issued in terms of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992);

**'burial plot'** means the demarcated place in a cemetery that has been designated as such by the caretaker or an authorised official for the location of a grave;

**'caretaker'** means a person or official appointed by the municipality to be in charge of and to exercise control in or over a cemetery;

**'cemetery'** means a piece of land duly set aside and demarcated by the municipality or a predecessor local authority on an official plan for human burials, within the municipal boundaries of the municipality;

**'child'** where the word is used to describe a body, means any deceased person of or less than the age of 12 years and whose coffin will fit into the grave opening prescribed for children in terms of this by-law;

**'crematorium'** means any building fitted with appliances, facilities or structures for the purpose of burning human remains and shall include anything incidental or ancillary thereto;

**'grave'** means a site on a burial plot that has been prepared for the burial of a body;

**'municipality'** means the municipality of \_\_\_\_\_, established in terms of section 12 of the Local Government : Municipal Structures Act, 1998 (Act No. 117 of 1998) and includes any political structure, political office bearer, councillor, duly authorised agent thereof 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, councillor, agent or employee;

**'next of kin'** means –

- (a) the surviving spouse of the deceased; or failing such spouse,
- (b) an adult child of the deceased; or failing such child,
- (c) a parent of the deceased; or failing such parent,
- (d) an adult brother or sister of the deceased; or failing such brother or sister,
- (e) the nearest available adult relative of the deceased;

**'non-resident'** means any person who at the time of his or her death was not resident within the municipal boundaries of the municipality;

**"resident"** means a person who, at the time of death, was ordinarily resident within the municipal boundaries of the municipality or any person who, at the time of death, was the owner of fixed property within the municipal boundaries of the municipality for a period of at least 6 (six) months immediately prior to death; provided that, unless otherwise stipulated herein, the term does not include inmates of hospitals, institutions or other persons temporarily resident within the municipal boundaries of the municipality;

"**tariff**" means the charges as determined by the municipal council of the municipality from time to time in terms of this by-law.

## **CHAPTER 2**

### **CEMETERIES**

#### **2 Establishment of cemeteries**

- [1] The municipality may establish cemeteries within its municipal boundaries.
- [2] No person shall –
  - (a) establish a cemetery within the municipal boundaries of the municipality without the prior approval of an authorised official; or
  - (b) knowingly inter or cause to be interred any body in a cemetery which has been established without such approval.

#### **3 Taking over conduct and control of cemeteries by the municipality**

- [1] The municipality may take over the conduct and control of any cemetery situated within its municipal boundaries.
- [2] Where the conduct and control of a cemetery were the responsibility of a burial authority, the municipality and the burial authority may agree upon the terms and conditions of such taking over, provided that -
  - (a) the ownership of all movable and immovable property in respect of the cemetery shall vest in the municipality, subject to -
    - (i) the existence of any trust or other condition relating to the property;
    - (ii) payment by the municipality to the burial authority of fair compensation, determined with reference to market value, where such payment would be equitable or otherwise appropriate in the circumstances; and
    - (iii) compliance with the provisions of the Deeds Registries Act, 1937 [Act No. 47 of 1937], as amended from time to time;
  - (b) all revenue and other funds payable or recoverable in respect of the cemetery shall be payable to and recoverable from the municipality;

- (c) all other privileges and rights and all liabilities and obligations in respect of the cemetery shall devolve upon the municipality; and
  - (d) the provisions of the conditions set out in terms of subsection (a) shall apply *mutatis mutandis* to subsections (b) and (c).
- (3) Notwithstanding the existence and continued functioning of a burial authority and where the municipality decides not to take over the conduct and control of any cemetery, responsibility for the proper and effective conduct and control of such cemetery shall remain with the municipality.

#### **4 Setting aside of portion of a cemetery for burial of deceased of a religious group**

The municipality may set aside any portion of a cemetery for the burial of the deceased of any religious group, body or community, provided that -

- (a) the foregoing shall be interpreted so as to apply to a person of any major faith, commonly recognised as such;
- (b) such setting aside shall not entitle any person to be buried in any particular place in a cemetery.

#### **5 Disposal of right to burial**

- (a) The municipality may sell or otherwise dispose of the right to burial in a specified burial plot or a specified cemetery 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.
- (b) The holder of a right to burial shall not dispose of such right except with the written permission of the municipality and such holder or his or her next of kin shall not permit any other person, not approved by the municipality, to be buried in the specified burial plot or specified cemetery in respect of which such right exists.

#### **6 Written permission for burial**

[1] No person shall bury a body in a cemetery -

- (a) except in terms of the authority of a written permit issued by the caretaker or authorised official; 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 a burial order and shall contain such information as may be required by the caretaker or an authorised official.

## **7 Burial**

- [1] Except with the permission of the caretaker or an authorised official, who shall record the circumstances in terms of which such permission is granted, no person shall bury a body in a cemetery during the hours between sunset and sunrise.
- [2] No person shall -
- (a) bury a body unless the grave is of sufficient depth so that the top of the body, or the top of a coffin, as the case may be, 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 coffin 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.

## **8 Measurements of burial plots and graves**

- [1] The standard measurements for burial plots shall be determined by the municipality.
- [2] The standard measurements for graves shall be as follows -
- (a) in respect of adults -
    - (i) length: 2 200 mm;
    - (ii) width: 1 200 mm; and
    - (iii) depth: 1 800 mm;
  - (b) in respect of children -
    - (i) length: 1 350 mm;
    - (ii) width: 600 mm; and
    - (iii) depth: 1 500mm.
- [3] Where deemed necessary or appropriate by the municipality, a grave may be prepared in such a manner so as to permit the burial of a body in a vertical position, provided that –

- (a) an express request has been made to this effect by the next of kin;
- (b) the consent of the next of kin has been obtained in circumstances where sub-section (a) does not apply; and
- (c) standard measurements have been determined by the municipality to give effect to such manner of burial.

## **9 Appearance of burial plots and graves**

- [1] No person shall erect or place any kerb, tombstone, monument, railing, fence or similar ornamentation upon a burial plot or grave -
  - (a) except under the authority set out in a written permit issued by the caretaker or an authorised official;
  - (b) otherwise than in accordance with the conditions set out in such permit; or
  - (c) in such a manner so as to exceed the boundaries of a burial plot.
  
- [2] The size (outer dimensions) of any kerb, tombstone, monument, railing, fence or similar ornamentation on burial plots or graves shall not exceed the following measurements -
  - (a) in respect of adults -
    - [i] single burial plot: 2 500 mm x 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; and
    - [v] tombstones shall not be higher than 1 600 mm above the surface of the ground;
  - (b) in respect of children:
    - [i] single burial plot: 1 500 mm x 1 000 mm;
    - [ii] width of kerb: 150 mm; and
    - [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 ornamentation concerned and the inscription to be placed thereon and the municipality may refuse to issue such permit if, in its reasonable opinion, such ornamentation is likely to be of improper workmanship or quality or is likely in any way to disfigure a cemetery or is calculated to offend the public.
- [4] No person shall -
- (a) use any portion of a cemetery for the cutting, dressing and manufacturing of kerbs, tombstones, monuments, railings, fencing or similar ornamentation 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 or similar ornamentation on or around a grave or bring any materials into a cemetery for the purposes of such work, except during the hours between sunrise and sunset on Mondays to Fridays but excluding public holidays; or
  - (c) at any time leave any building sand, stones, builders' rubble, soil, rubbish or other debris in the cemetery.

## **10 Maintenance of graves and ornamentation**

- [1] Whenever a person who erected or placed ornamentation in a cemetery allows it to fall into such state of disrepair as in the reasonable opinion of the municipality constitutes a danger or a disfigurement in the cemetery, the municipality may by written notice require him or her to effect such repairs as may be specified in such notice and if his or her address is unknown then 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 (3) three months from the service or publication of such notice, the municipality may itself effect the repairs or remove the ornamentation without paying compensation and may recover the expense of such repairs or removal from such person.
- [3] The holder of a right to burial in a specified burial plot or in a specified cemetery shall keep that burial plot and the ornamentation thereon in good order and repair.
- [4] The municipality may undertake the upkeep of graves at the prescribed tariff.

- [5] No person shall undertake the upkeep of graves in a cemetery except with the written consent of the municipality.

## **11 Planting of trees or shrubs**

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

## **12 Prohibition**

No person shall -

- [1] enter or leave a cemetery except by the proper gates;
- [2] sit, stand or climb upon or over any grave, ornamentation, gate, wall, fence or building in a cemetery;
- [3] drive a hearse in a cemetery except upon the roads or paths provided for that purpose;
- [4] conduct a religious ceremony or service according to the rites of any religious group, body or community in that part of a cemetery set aside for members of any other religious group, body or community;
- [5] expose or convey a body in an street, cemetery or other public place in such a manner so as to offend the public;
- [6] mark, draw, scribble, place an advertisement upon, or in any way deface any grave, ornamentation, gate, wall, fence or building in a cemetery;
- [7] smoke in a cemetery;
- [8] create or allow to be created a nuisance in a cemetery;
- [9] disrupt or allow to be disrupted any funeral proceedings in a cemetery;
- [10] discharge any fire-arm in a cemetery, except as a salute at a military funeral;

- [11] use or cause any cemetery to be used for any purpose likely to offend the public;
- [12] bring any cat, fowl or other animal or bird into a cemetery or allow it to wander therein;
- [13] trade or hawk goods or services in a cemetery;
- [14] drive a permitted vehicle in a cemetery at a speed in excess of 20km/h; or
- [15] obstruct, resist or oppose the caretaker or an authorised official in any cemetery in the course of his or her duty or refuse to comply with any order or request which the caretaker or authorised official is entitled to make in terms of this by-law.

### **CHAPTER 3**

#### **CREMATORIA**

#### **13 Establishment of crematoria**

- [1] The authority provided to the municipality in terms of this by-law to establish cemeteries shall be deemed to extend to and include the establishment of crematoria, provided that no body shall be burned in any crematorium until -
  - (a) the plans and site thereof have been approved by the municipality; and,
  - (b) the crematorium has been certified by the municipality as complete, built in accordance with such plans and properly equipped for the purposes of cremation.
- [2] The provisions contained in sections 1, 2, 3, 6 and 12 of this by-law shall apply, *mutatis mutandis*, to this chapter.

#### **14 Site of crematorium**

No crematorium shall be constructed –

- [a] within 200m of any residential erf, except with the written consent of any owner or occupier in respect of such erf; or
- [b] Within 50m of any public road, street or thoroughfare.

#### **15 Donations of land**

A municipality may accept –

- (a) a donation of land for the purpose of establishing a crematorium; and
- (b) a donation of money or other property to enable the municipality to establish, conduct or control a crematorium.

**16 Regulations in respect of cremation** - The municipality may make regulations with regard to cremation and the disposal or interment of ashes.

**17 Prevention of cremation** - A magistrate shall have authority to prevent any cremation or revoke any permission to proceed with a cremation when such magistrate deems it to be necessary for purposes of having an investigation carried out in terms of the Criminal Procedure Act, 1977 [Act No. 51 of 1977], as amended from time to time.

## **CHAPTER 4**

### **EXHUMATIONS**

**18 Restrictions on exhumation**

[1] Except as herein provided, no person shall exhume, disturb, remove or re-inter any body from or in a cemetery without the prior written approval of the municipality and otherwise in accordance with such conditions as may be imposed by the municipality in terms of subsection (3).

[2] The provisions of subsection [1] shall not apply in respect of the exhumation and re-interment of any body which has mistakenly been interred in a grave reserved for the interment of another body if –

- (a) compliance with the provisions of subsection [1] would unduly delay the interment of such other body; and
- (b) the exhumation and re-interment are carried out in accordance with the order of a magistrate.

[3] The approval contemplated in sub-section (1) may be granted by the municipality, provided that –

- (a) conditions may be imposed in respect thereof for the sake of public health; and
- (b) a health officer or an authorised official may be present at the exhumation or during the activities contemplated in terms of sub-section (1).

**19 Application for the approval of the municipality**

- [1] Any person who wishes to obtain the approval required in terms of section 18(1) shall make written application to the municipality and shall –
- (a) indicate :
    - (i) the location of the grave and the proposed place of re-interment;
    - (ii) the reasons for the application; and
    - (iii) the measures and precautions to prevent any danger to health or cause for offence;
  - (b) furnish such proof as may be available with regard to the date and cause of death;
  - (c) submit the written approval of the religious group, body or community that may be affected by the proposed exhumation and re-interment; and
  - (d) attach to such application the written approval of the next-of-kin.
- [2] The municipality may require any applicant who is unable to comply with all or any of the requirements stipulated in terms of subsection (1) to publish in a local newspaper a notice –
- (a) stating that application has been made for the approval of the municipality in terms of subsection (1);
  - (b) indicating the location of the grave concerned, the names as may be available of the person interred therein and the place of the proposed re-interment; and,
  - (c) calling upon any interested person to lodge with the municipality in writing, not later than 14 (fourteen) days after publication of the notice, any objection to the proposed exhumation and re-interment.
- [3] The municipality shall give due consideration to any objection lodged in response to the notice contemplated by subsection (2).

## **CHAPTER 5**

### **CLOSED OR DISUSED CEMETERIES**

#### **20 Closure of cemeteries**

- [1] The municipality may close any cemetery or portion thereof, provided that -
- (a) the closure is by reason of the prevention of danger to the health of the public or any other justifiable reason;
  - (b) notification of such closure is published in a local newspaper and displayed for the public to view; and
  - (c) a copy of the notification is provided to the relevant burial authority, if still extant and functioning.
- [2] Notwithstanding the closure of a cemetery or portion thereof, the municipality may permit the interment of a body in a specified burial plot in such cemetery or portion thereof, subject to such conditions as the municipality may impose.
- [3] No person shall inter any body in a cemetery or portion thereof closed in terms of subsection (1) or in a specified burial plot in contravention of any conditions imposed in terms of subsection (2).

**21 Maintenance of closed or disused cemetery** - The municipality may, at the request of a religious group, body, community or other persons having an interest in any closed or disused cemetery, undertake the maintenance of such cemetery.

**22 Use of disused cemeteries**

- [1] The municipality may, after compliance with the provisions of subsection (3) and subject to any conditions of title, use any cemetery or portion thereof which has been closed or disused for a period of not less than 20 (twenty) years for such purpose as will not desecrate the ground, any human remains or any graves in such cemetery or portion thereof.
- [2] After compliance with the provisions of subsection (3) and subject to any conditions of title, the municipality may remove to another cemetery the human remains and graves, insofar as may be possible, from any cemetery or portion thereof which has been closed or disused for a period of not less than 20 (twenty) years, provided that such removal is effected respectfully and so as not to offend the next-of-kin concerned and the public.
- [3] Before acting in terms of subsections (1) or (2), the municipality shall -
- (a) give notification in a local newspaper and display for public view its intention to do so;
  - (b) invite the public to comment and submit any objections to the municipality in respect thereof; and

- (c) take all such comments and objections, as may be received, into consideration.

## **CHAPTER 6**

### **GENERAL PROVISIONS**

#### **23 Prohibition of interment**

- [1] The municipality may prohibit the interment of a body in any cemetery, provided that -
  - (a) the prohibition is by reason of the prevention of danger to the health of the public or any other justifiable reason;
  - (b) notification of such prohibition is published in a local newspaper and displayed for the public to view; and
  - (c) a copy of the notification is provided to the relevant burial authority, if still extant and functioning.
- [2] Any such prohibition shall not discriminate against any person on grounds of race, gender, marital status, ethnic or social origin, colour, sexual orientation, religion, conscience, believe, culture, language or birth.

#### **24 Identification of burial plots or graves and keeping of registers**

- [1] Each burial plot or grave located at a cemetery within the municipal boundaries of the municipality shall be identified by number allocated by the municipality, such that -
  - (a) the location of the burial plot or grave and details of any deceased interred therein may be readily ascertained by the public; and
  - (b) the number is listed in a register maintained by the municipality.
- [2] The municipality shall maintain a register of all interments and cremations performed at the cemeteries and crematoria located within its municipal boundaries, such register to stipulate -
  - (a) the names of the deceased;
  - (b) the deceased's date of birth and date of death; and
  - (c) the identification of the burial plot or grave in respect of which the deceased was interred, provided that no such detail is necessary in the event of the deceased's cremation.

- [3] The municipality shall maintain a register of all rights to burial in a specified burial plot or a specified cemetery, as envisaged by this by-law, including -
- (a) the names and address of the holder of such a right;
  - (b) the date and number of any certificate setting out the conditions attaching to such right; and
  - (c) details of any permission granted by the municipality to the holder for the holder's disposal of such right.
- [4] The registers referred to in subsections (1), (2) and (3) may constitute one comprehensive record to be kept securely at the principal address of the municipality.
- [5] Any register contemplated by this section shall be made available to any member of the public upon receipt of reasonable request.

## **25 Offences and penalties**

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

- (a) a fine of R1000 or imprisonment for a period of 6 (six) months or such imprisonment without the option of a fine 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 such additional imprisonment without the option of a fine 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 a court to have been reasonably incurred by the municipality as a result of such contravention or failure.

## **26 Regulations**

- [1] The municipality may make regulations regarding –
- (a) the granting of approval for –
    - (i) the establishment of a cemetery, as contemplated in terms of section 2(2)(a);
    - (ii) the plans and site of a crematorium, as contemplated in terms of section 13(1)(a); and
    - (iii) the exhumation, disturbance, removal or re-interment

- of a body, as contemplated in terms of chapter 4, including -
- (aa) the conditions attached to such approval, as contemplated in terms of section 18(3);
  - (bb) the form and contents of the written application contemplated in terms of section 19(1);
- (b) the terms and conditions for the taking over, by the municipality, of the conduct and control of a cemetery, as contemplated in terms of section 3(2);
  - (c) the identification and designation of any portion of a cemetery for the burial of persons of a religious group, body or community, as contemplated in terms of section 4;
  - (d) with regard to the disposal of a right to burial, as contemplated in terms of section 5 –
    - (i) the conditions of such disposal or sale;
    - (ii) the form and contents of the certificate mentioned in the said section;
  - (e) the granting of written permission for burial, including –
    - (i) the conditions attached thereto, as contemplated in terms of section 6(1)(b);
    - (ii) any additional information required, as contemplated in terms of section 6(2);
  - (f) the burial of a body, as contemplated in terms of section 7;
  - (g) the measurements of burial plots and graves, as contemplated in terms of section 8, including amendments thereto;
  - (h) with regard to ornamentation in terms of section 9 –
    - (i) the issuing of a permit as contemplated in terms of section 9(1) and (3), including –
      - (aa) the form and contents thereof; and
      - (bb) guidelines as to when such permit may be refused;
    - (ii) the measurements of such ornamentation, as contemplated in terms of section 9(2), including amendments thereto; and
    - (iii) the granting of permission for the activities contemplated in terms of section 9(4);

- (i) the issuing of a written notice in connection with the maintenance of graves and ornamentation as contemplated in terms of section 10(1), including –
  - (i) the form and contents thereof; and
  - (ii) the delivery or publicisation of such notice;
- (j) the determination of tariffs, as contemplated in terms of section 10(4);
- (k) procedures and requirements for cremation and disposal or interment of ashes, as contemplated in terms of section 16;
- (l) conditions attached to permission for interment in a cemetery that has been closed, as contemplated in terms of section 20(2);
- (m) the identification of burial plots or graves and the keeping of registers, as contemplated in terms of section 24, including -
  - (i) the manner of identification; and
  - (ii) the form and contents of the registers required in terms of the said section;
- (n) (i) the prescription of penalties for the offences contemplated in terms of section 25; and
  - (ii) the amendment of such penalties from time to time;
- (o) any matter which may be prescribed in terms of this by-law and any matter which may facilitate the application of this by-law.
- (2) (a) The municipality shall, not less than 1 (one) month before promulgating a regulation in terms of sub-section (1), cause a draft of the regulation to be communicated to the local community and to be made public in terms of sections 21 and 21A of the Local Government : Municipal Systems Act, 2000 [Act No. 32 of 2000], together with a notice declaring the intention of the municipality to issue such a regulation and inviting comments or representations.
- (b) If the municipality decides to alter the draft regulation as a result of comments or representations received pursuant to such invitation, then it shall not be necessary to communicate and make public the alteration before the amended draft is promulgated as a regulation.

## **27. Repeal of by-laws**

Any by-laws relating to cemeteries and crematoria adopted by the municipality or any erstwhile municipal council now comprising an administrative unit of the municipality shall be repealed from the date of promulgation of this by-law.

**28. Short title**

This by-law is called the By-law Relating to Cemeteries and Crematoria, 2004 and takes effect on a date determined by the municipality by proclamation in the Provincial Gazette.