**CEMETERIES, CREMATORIA AND UNDERTAKERS BY- LAW**

Be it enacted by the Council of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_ Municipality, in terms of section 156(2) of the Constitution of the Republic of South Africa, 1996, read with section 11(3)(m) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), as follows:

**ARRANGEMENT OF SECTIONS**

*Section*

1. Definitions

2. Establishment of cemeteries

3. Official hours

4. Register

5. Numbering of graves

6. Reservation of graves

7. Transfer of reserved rights

8. Number of corpses in a grave

9. Number of Corpses in a coffin

10. Application for a burial

11. Burial of a corpse

12. Indigent persons

13. Burial of ashes

14. Burial of a cadaver

15. Persons dying outside the municipal area

16. Grave measurements

17. Applications for cremation

18. Cremations

19. Coffins for cremation

20. Duties of proprietor

21. Council may establish sections in a cemetery

22. Monumental section

23. Berm section

24. Landscape section

25. Gardens of remembrance

26. Cremation and corpse reduction facility

27. Memorial square

28. Mausoleum

29. Surface grave units

30. Denominational section

31. Consent of the Council

32. Requirements for the erection of memorial work

33. Position, movement and removal of memorial work

34. Work and maintenance in respect of memorial work

35. Damaging of a memorial work

36. Vehicle and tools

37. Complying with directives of the Council

38. Times for bringing in material and doing work

39. Subsiding soil conditions

40. Production of written consent

41. Application for exhumation

42. Conditions of exhumations

43. Exhumation and reburial

44. Screening of exhumation

45. Emergency exhumations

46. Reduction burial

47. Appointment of officer in charge

48. Children

49. Keeping to path

50. Prohibited conduct in a cemetery

51. Use and closure of a disused cemetery

52. Injuries and damages

53. Fire-arms and traditional weapons

54. Complaints

55. Charges

56. Rights on Graves

57. Consents, Notices and Orders

58. Notice of compliance and representations

59. Religious Ceremonies

60. Hearses and vehicles at Cemeteries

61. Exposure of Bodies

62. Instruction of Caretaker

63. Music Inside Cemetery

64. Interments Attended by large Numbers of People

65. Preparation of corpses

66. Application for issue of transfer certificate

67. Issue or transfer of certificate of competence

68. Validity and transfer of certificate of competence

69. Issue of provisional certificate of competence

70. Duties of Holder

71. Suspension or revocation of a certificate of competence or provisional certificate of competence

72. Requirements relating to funeral undertaker premises.

73. Conveyance of mortal remains

74. Hygiene

75. Appeal

76. Exemptions

77. Offences and Penalties

78. Repeal of existing By-laws

79. Short title and commencement

**CHAPTER 1**

**DEFINITIONS**

**1. Definitions**

In this by-law, unless inconsistent with the context –

"**adequately ventilated and illuminated**" means adequately ventilated and illuminated as contemplated in the National Building Regulations and Standards Act, 1977 (Act No. 103 of 1977), as amended or the health bylaws applicable within the area of jurisdiction of the Council;

**“adult”** means a deceased person over the age of 12 years and any deceased person the dimensions of whose coffin cannot be accommodated in an excavation of 1,40m in length and 400 mm in width;

**“above-ground burial”** means when a structure is employed for the interment of a body and such a structure is located above normal ground level;

**“after-hours fee”** means a fee over and above the set norm of fee for burial or cremation outside normal week day cemetery operating hours, save in the case of cremations or burials which, because of religious belief, are undertaken after such hours, or in the case of burial, where the mourners undertake to close the grave;

**“approved”** means approved by the Council;

**“ashes”** means the cremated remains of a body;

**“ash grave”** means a grave for the burial of cremated remains, with such grave covered by a memorial plaque or slab;

**“authorised official”** means an official of the Council authorised to implement and enforce the provisions of this By-law;

**“berm section”** means a grave section in a cemetery set aside by the Council where memorial work is restricted to a headstone only with ground cover planted over the length of the grave;

**“biodegradation”** means a process whereby the corpse is disposed of by bio-friendly chemical dissolution;

**“Births and Deaths Registration Act”** means the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992);

**“body”** means any dead human body, including the body of a stillborn child;

**“burial order”** means an order issued in terms of the Births and Deaths Registration Act;

**“burial”** means burial or inhumation into earth or any other form of burial and includes a tomb and any other mode of disposal of a body;

**“cemetery”** means any land or part thereof within the municipal area set aside by the Council or approved by the Council as a cemetery;

"**certificate of competence**" means a document contemplated in section 5 of this bylaw;

**“child”** means a deceased person who is not an adult;

“**Commonwealth war grave**” means any grave, tombstone, monument or memorial connected with a Commonwealth war burial in terms of the Commonwealth War Graves Act, 1992 (Act No. 8 of 1992);

**“corpse”**  means the remains of a deceased person and includes a still-born child and foetus;

**“corpse reduction”** means any process used to reduce corpses including cremation, freeze reduction and biodegradation;

**“Council”** means —

(a) the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Municipality, exercising its legislative and executive authority through its municipal council;

(b) its successor-in-title;

(c) a structure or person exercising a delegated power or carrying out an instruction, where any power in this By-law has been delegated or sub-delegated, or an instruction given, as contemplated in section 59 of the Local Government: Municipal Systems Act; 2000 (Act No. 32 of 2000); and

(d) a service provider fulfilling a responsibility under this By-law;

**“cremation”** means the process of disposing of a human body by fire;

**“crematorium”** the buildings in which the ceremony is conducted and the cremation carried out;

**“crematorium section”** means a section of a cemetery or crematorium set aside by the Council for the burial of ashes;

**“cremated remains”** means all recoverable ashes after the cremation process;

"**environmental health practitioner**" means a person who is an employee of Council, or contracted by Council and who is registered with the Health Professions Council of South Africa and is designated in terms the Health Act;

**“established practice**” means a practice in terms of which the owner or person in charge or his or her predecessor in title routinely gave permission to people residing on land to bury deceased members of their family on that land in accordance with their religion or cultural belief;

"**existing funeral undertaker's premise**” means existing funeral undertakers 'premises, which are used as such, on the date of commencement of this By-law;

**“exhumation”** means the removal of a body from its grave;

**“family”** in relation to an occupier, and for the purposes of –

(a) the definition of an “established practice”;

(b) section 10(2)(b)(ii); and

(c) section 10(2)(c)(i)

means spouse or spouses, partner or partners, direct or adopted child or children, or grandchild or grandchildren, parent or parents, grandparent or grandparents, as well as dependent or dependents.

**“freeze reduction”** means the process whereby the corpse is disposed of by freeze drying;

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

**“garden of remembrance”** means a section of a cemetery or crematorium set aside for the erection of memorial work , placing or scattering of ashes, but does not include a columbarium;

**“grave”** means any piece of land excavated for the burial of a body within a cemetery and includes the contents, headstone or other marker of such place and any other structure on or associated with such place;

**“grave of conflict”** means the grave of a person who died while defending the country;

**“hero”** means a person who performed a heroic act for the country and is given the status of a hero by the Council;

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

**“indigent person”** means a destitute person who has died in indigent circumstances, or if no relative or other person, welfare organisation or non governmental organisation can be found to bear the burial or cremation costs of such deceased person and includes a pauper;

**“indigent relief”** means assistance received for the burial or cremation of an indigent person;

**“in ground burial”** means when land is excavated for the interment of a body;

**“interment”**  means to commit a corpse or ashes to its final resting place

**“land”**, for the purposes of –

1. The definitions of –

(i) established practice;

(ii) occupier;

(ii) owner; and

(iv) person in charge; and

(b) Sections 10(2(b)(ii) and 10(2)(c)(i),

means land predominantly used for agricultural purposes;

**“landscape section”** means a grave section in a cemetery set aside by the Council where memorial work is restricted to a horizontally placed plaque or a memorial slab, with a ground cover planted over the length of a grave

**“Minister”** means that member of the Cabinet of the Province of KwaZulu-Natal whose portfolio includes the responsibility for cemeteries and crematoria;

**“mausoleum”** means an above-ground burial chamber or chambers to accommodate a body and a coffin with such chambers stacked vertically in varying forms and heights

**“medical officer of health”** means the officer appointed by Council or any other person acting in the capacity of the medical officer of health;

**“memorial section”** means a section of a cemetery set aside for the erection of memorials;

**“memorial wall”** means a wall in a cemetery or crematorium section provided for the placement of inscribed tablets commemorating deceased persons;

**“memorial work”** means any headstone, monument, plaque, or other work, or object, erected or intended to be erected in any cemetery or crematorium to commemorate a deceased person, and includes a kerb demarcating a grave, and a slab covering a grave;

**“monumental section”** means a grave section in a cemetery set aside for the erection of memorial work

**“multiple burial”**  means subsequent interments in the remaining depth of the grave

**“municipal area”** means the area under the control and jurisdiction of the Council;

"**new funeral undertaker's premises**" means undertaker's premises that start operating as such after the date of commencement of this By-law;

**“next of kin”** means the surviving spuse, unless otherwise determined by customers, or if there is no surviving spouse, the surviving child or children, or where there is no surviving child, the closest surviving descendant or descendants, or if there are no surviving descendants, the surviving parent or parents, or where there is no surviving parent or parents, the surviving sibling or siblings, or where there is no surviving sibling or siblings, the other blood relation or blood relations of the deceased who are related to him or her in the next degree, provided that where this By-law requires the consent of the next of kin, and the next of kin refers to more than one person, in terms of this definition, then the consent of all these persons will be required;

**“niche”** means a compartment in a columbarium or garden of remembrance for the placing of ashes;

**“notifiable disease”** means any disease that is required by law to be reported to government authorities when diagnosed even at death;

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

**“occupier”** means a person residing on land which belongs to another person and who has consent or another right in law to do so;

**“officer-in-charge”** means the person in the employ of the Council who, from time to time, is in control of any cemetery;

**“owner”** means the owner of land at the time of death contemplated in section 10(2)(b);

**“ossuary”**  means a chest, building, well or site made to serve as the final resting place of human skeletal remains;

**“person in charge”** means a person who at the time of a death contemplated in section10(2)(b) had or has a legal authority to give consent to a person to reside on the land in question;

**"preparation**" means any action aimed at the preparation of a corpse for a funeral or for cremation, export or other disposal and will include the embalming of such corpse for the said purpose, and

"**prepare**" and any work derived there from will have a corresponding meaning;

**“prescribed”** means prescribed by the Council;

“**prescribed fee**” means a fee determined by the Council by resolution of that Council or its successor.

**“private cemetery”** means land which is used as a cemetery but not owned by the Council

**“private crematorium”** means a building where deceased persons are cremated but is not owned or managed by the Council

"**provisional certificate of competence**" means a document as referred to in section 68;

**“public grave”** means a grave in which a second burial of any member of the public may take place after a period of five years and on which the erection of a headstone is not permitted for either the first or second burial;

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

**“reduction burial”** refers to the making of a grave available for a subsequent interment after a specific period;

"**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

“**South African Heritage Resources Agency**” means the South African Heritage Resources Agency, established in terms of section 11 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999)

**“stone mason”** means a person carrying on business as a stone mason;

"**the Act**" means the Health Act, 2003 (Act No. 61 of 2003), and any expression to which a meaning has been assigned in the Act will have such meaning and, unless the context otherwise indicates; and

"**thermometer**" means an apparatus which can give the temperature readings referred to in the bylaws, the combined accuracy of such a thermometer and its temperature – sensitive sensor being approximately 0,50C.

**“victim of conflict”** means a person defined in section 1 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999).

**CHAPTER 2**

**ESTABLISHMENT AND MANAGEMENT OF CEMETERIES**

**Establishment of cemeteries**

**2.** The Council may from time to time set aside and reserve suitable municipal land within the municipality for the establishment and management of a cemetery. The Council may consider and approve an application for the establishment and management of a cemetery. The Council may consider and approve an application for the establishment and maintaining of a private cemetery or a private columbarium on private land on the conditions that the Council may deem necessary.

**Official hours**

**3.**(a) The cemetery and the office of the caretaker will be open during the hours as determined by the Council. The cemetery office of the caretaker will be open from Monday to Friday.

(b) Burials will take place on the days and during the hours as determined by the Council.

(c) The Council has the right to close a cemetery or any portion thereof to the public for such periods and for such reasons as the Council may deem fit

(d) No person must be or remain in a cemetery or part thereof before or after the official hours as determined by the Council or during any period when it is closed for the public, without the permission of the caretaker.

(e) The Council may, if the case is one of emergency or the custom or conventions of a religious or cultural group, permit internment outside the times contemplated in subsection.

**Register**

**4.**(a) A register of graves and burials must be kept by the caretaker.

(b) Such register must be completed as far as possible immediately after a burial has taken place, with reference to the prescribed particulars contained in the burial order concerned.

**Numbering of graves**

**5.**(a) All graves in a cemetery that are occupied or for which a burial has been authorised in terms of the provisions of this by-law must be numbered by the Council.

(b) The number must be affixed to the grave and indicated on a plan to be kept available in the caretaker's office.

**Reservation of graves**

**6.**(a) No reservation of a grave in a cemetery will be allowed.

(b) Reservation of graves made and recorded in the official records of the Council in terms of any previous by-laws will still be valid and the Council must honour such reserved rights.

**Transfer of reserved rights**

**7.**(a) A reserved right as contemplated in section 6(b) may not be transferred without the prior approval of the Council.

(b) Application to transfer such right must be made to the caretaker in writing by completing and submitting a prescribed application form.

(c) If the application is granted, a certificate will be issued in favour of the transferee who will become the holder

(d) The reserved right may be cancelled on request of the holder and if the request is approved by the Council, the amount paid by the holder (if any) minus 10% administration fees, will be refunded to the holder.

**Number of corpses in a grave**

**8.**(a) Only one corpse may be buried in a grave with measurements as contemplated in this by-law.

(b) Only two corpses may be buried in a grave with measurements as set out in sub-section 16(d): Provided that application for the burial of two corpses has been made to the caretaker in writing by completing and submitting the required application form before the first corpse is buried.

(c) After the re-opening of a grave for the purpose of the burial of a second corpse as mentioned in sub-section 9(b) in that grave, a concrete layer of not less than 25 mm thick must be cast above the coffin previously buried.

(d) If on re-opening any grave, the soil is found by the Medical Officer of Health to be offensive or dangerous to the general health of people, the situation will be handled in consultation with the Medical Officer of Health.

**Number of Corpses in a coffin**

**9.**(1)(a) A deceased stillborn child and his or her deceased mother may be buried in the same coffin at the fee for a single interment of an adult.

(b) Still-born twin babies may be buried in the same coffin at the fee for a single interment of a stillborn child.

(c) Subject to subsection (a) and (b), only one corpse may be contained in a coffin, unless this is contrary to the tradition, customs or religious beliefs of the deceased person or the next of kin, or where there is no next of kin any other closest family member.

(d) If there is more than one body in a coffin, each must be contained in a separate body bag

**CHAPTER 3**

**BURIALS**

**Application for a burial**

**10.**(1) Application for permission for a burial in a cemetery must be made to the caretaker in writing by completing and submitting a prescribed application form. An application must be accompanied by –

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

(b) the prescribed fees; and

(c) a reservation certificate, if applicable;

(d) the death certificate of the corpse

(e) an affidavit by the next of kin of the deceased, or where not applicable, other close relative, consenting to the disposal of the corpse when such corpse is to be buried in the manner requested;

(f) in the instance where a person was suffering from a notifiable disease, this must be indicated in the application; and

(g) details of cultural or religious practices that need to be adhered to.

(2)(a) No person may, subject to section 10(2)(b), without the prior written approval of the Council, execute, cause, or allow a burial or cremation in any other place in the municipality than in a cemetery or crematorium established and managed by the Council.

(b) An occupier may –

(i) be buried on the land on which he or she resided at the time of his or her death; and

(ii) bury a member of his or her family on the land on which the occupier resides.

(c) A burial contemplated in section 10(2)(b) may take place –

(i) after notification to the owner or person in charge by the occupier or his or her family members; and

(ii) if an established practice exists in respect of the land on which the occupier resides.

(3) An application for permission for a burial must be submitted to the caretaker at least 24 working hours prior to the planned burial, failing which the caretaker may refuse the application.

(4) No person may execute a burial or cause or allow a burial to be executed in a cemetery, unless written permission for the burial has been obtained, a specific grave has been allocated for the purpose of the burial and a date, and time for the burial has been arranged with the caretaker.

(5) In allocating a date and time for a burial, the caretaker must have regard to the customs of the deceased's relatives and their religion or church affiliation.

(6) In allocating a grave the caretaker will as far as possible allow the responsible person access to a plan of the cemetery showing the various sections, and allow him or her to select the section of his of her choice, but not the individual grave of his or her choice. The allocation of a specific grave is the sole responsibility and discretion of the caretaker and a burial will be executed only in a grave allocated by him or her.

(7) The Council may allow in its discretion a burial without payment of the prescribed fees in a part of a cemetery set aside for such purposes and in such manner as it may deem fit.

(8) Notice of cancellation or postponement of a burial must be submitted to the caretaker at least 4 working hours before the time set for the burial.

(9) The granting of permission for a burial and the allocation of a specific grave in a cemetery, does not give the applicant, the responsible person or any other person any right in respect of such grave other than to bury a corpse in the grave.

(10) Except with the permission of the Council, no person may place or cause any coffin constructed of any material other than natural wood or other perishable material to be placed in any grave.

(11) The Council reserves the right to inspect the contents of a coffin before interment, in the event of there being any irregularities in the paperwork.

(12) The Council may refuse a person, including a funeral undertaker, permission to inter a corpse if the relevant documentation required by the Council has not been submitted prior to the interment.

**Burial of a corpse**

**11.**(a) All graves must be, subject to section 10(2) provided by the caretaker with the exception of brick-lined or concrete-lined graves, in which cases the brickwork or concrete work must be carried out by the undertaker under the supervision of the caretaker and in conformity with the specifications applicable to ordinary graves.

(b) There must be at least 1200 mm of soil between the top of an adult coffin and the ground surface, and at least 900 mm of soil between the top of a child coffin and the ground surface.

(c) All corpses must be placed in a coffin for the burial thereof, except as provided for the Muslim community.

(d) No person may without the prior permission of the caretaker conduct any religious ceremony or service according to the rites of one denomination in any portion of a cemetery reserved by the Council in terms of the provisions of this by-law, for the use of some other denomination.

(e) No person may permit any hearse in a cemetery to leave the roads provided, and every hearse must leave the cemetery as soon as possible after the funeral for which it was engaged.

(f) Every person taking part in any funeral procession or ceremony must comply with the directions of the caretaker as to the route to be taken within the cemetery.

(g) No person may convey or expose a corpse or any part thereof in an unseemly manner in any street, cemetery or public space.

(h) Every application and every document relating to any burial must be marked with a number corresponding to the number in the register referred to in section 4 and must be filed and preserved by the Council for a period of not less than ten years.

(i) Every coffin or body upon being placed in any grave must, at once, be covered with 500 mm of earth.

(j) No person may disturb any human remains or any soil adjacent thereto in any cemetery, except where such disturbance is expressly permitted by this bylaw or by an order of court.

(k) On completion of interment, the person referred to in subsection (a) or persons who dug the grave must clear the surrounding areas including pathways and graves of all soil, debris and other matter or material exposed by the digging of the grave.

(l) The person who arranged the interment must take all reasonable steps to ensure that no damage occurs to surrounding property during the interment ceremony, including any collapse of grave walls and take steps to prevent such collapse.

(m) The Council has the right to flatten any area on, or surrounding any grave including the grave mound three months after the burial has taken place.

**Indigent persons**

**12.** A person making application for the burial of an indigent person, must make a declaration to that effect.

**Burial of ashes**

**13.**(1) Ashes may be buried in a coffin and only two such coffins containing ashes may be buried in an extra deep grave; provided that a coffin does not exceed the average body weight of 70 kg, and further-more that the grave is re-adjusted to the prescribed depth and measurements.

(2) No person may execute a burial or cause a burial of ashes to be executed in a cemetery, unless written permission for the burial has been obtained, a specific grave or niche has been allocated for the purposes of the burial and a date, and time for the burial has been arranged with the caretaker.

(3) Application for the burial of ashes for definite periods or in perpetuity, or for the provision of memorial tablets of approved material to be fixed on the building, columbarium or other facility must be made to the caretaker in writing by completing and submitting a prescribed application form.

(4) Niches will be allocated by the caretaker strictly in the order in which the applications therefore are received and no reservations for future use will be made.

(5) An application for permission for a burial must be submitted at least 24 working hours prior to the planned burial, failing which the caretaker may refuse the application.

(6) An urn or casket containing ashes that has been deposited in a building, columbarium, or other facility must not be removed without the caretaker's prior written consent.

(7) Every niche containing ashes must be sealed by a tablet approved by the Council and may only be opened for the purpose of withdrawing an urn or casket contained therein for disposal elsewhere, or for the purpose of depositing an additional urn or casket therein where after it will once again be sealed.

(8) Application for the opening of a niche must be made to the caretaker in writing by completing and submitting a prescribed application form.

(9) No person may introduce any material into the columbarium for the purpose of constructing or erecting any memorial work therein unless and until:

(a) approval for the burial has been obtained from Council;

(b) approval for the erection of the memorial work has been obtained from Council; and

(c) the prescribed fees have been paid which will be determined by Council from time to time.

(10) Any person engaged upon any work on the columbarium, must execute such work to the satisfaction of the caretaker, and such work must be undertaken during the official office hours of the cemetery.

(11) No permanent wreaths, sprays, flowers, or floral tributes may be placed in or on a columbarium.

(12) The columbarium may be visited daily during the official cemetery hours as determined by Council.

(13) Plaques must be made of material approved by the Council and must be affixed simultaneously with the placing of the ashes and within 30 days of the obtaining of the consent.

**Burial of a cadaver**

**14.** The remains of a corpse used at an educational institution for the education of students, generally known as a cadaver, may be buried in one coffin and two such coffins containing cadavers may be buried in an extra deep grave as contemplated in sub-section 16(d): Provided that a coffin does not exceed the average body weight of 70 kg, and furthermore that the grave is re-adjusted to the prescribed depth and measurements.

**Persons dying outside the municipal area**

**15.** The provisions of this By-law will apply *mutatis mutandis* to any burial in a cemetery of a person who has died outside the municipality

**16. Grave measurements**

(a) The excavation of a grave for an adult must be at least 1820 mm deep, 2300 mm long, and 760 mm wide.

(b) The excavation of a grave for a child must be at least 1400 mm deep, 1520 mm long, and 610 mm wide.

(c) In the event that a grave of a greater depth, length or width than those specified above is required, application in respect thereof, together with extra prescribed fees that are due, must be made to the caretaker together with the application to obtain permission for a burial.

(d) The excavation of an extra deep grave for the burial of two corpses must be at least 2400 mm deep 2300 mm long and 760 mm wide.

(e) Deviations from measurements of graves must be as follows:

Extra wide : 2300 mm long

: 840 mm wide

Extra long : 2530 mm long

: 760 mm wide

Rectangular small : 2300 mm long

: 900 mm wide

Brick-nogging : 2600 mm long

: 1050 mm wide

(f) The area of a rectangular grave for an adult must be 1500 mm wide by 2600 mm long.

(g) The area of a grave for an adult must be 1210 mm wide by 2430 mm long.

(h) The area of a grave for a child must be 1210 mm wide by 1520 mm long. If a coffin is too large, an adult grave must be used.

**CHAPTER 4**

**CREMATIONS**

**Applications for Cremation**

**17.**(1) Applications for cremation must be made upon terms, at times and places and upon payment of fees as determined by the Council.

(2) A person may only cremate or cause to be cremated any body within any crematorium after –

(a) Complying with applicable legislation;

(b) Obtaining approval from the Council; and

(c) Complying with the conditions as determined by the Council.

**Cremations**

**18.**(a) Where a member of the public desires to be present at a cremation, a request for such member to be present must be made to the Council, which will consider the request as it deems fit.

(b) Any corpse which contains a cardiac pacemaker or radio-active implant of any kind or any other material which may result in an explosion or harmful emissions when incinerated may not be cremated unless it is removed.

(c) A crematorium must be fitted with equipment in order to prevent the dispersion of ash into the atmosphere

**Coffins for cremation**

**19.**(a) When cremated a corpse must be contained within a coffin.

(b) A coffin in which a corpse is cremated must be made of wood or other non-toxic material.

(c) Non-toxic varnish, paint or glue must be utilised in the manufacturing of the coffin in which a corpse is cremated.

(d) When cremated, a coffin may only contain combustible material, including clothing, shoes and other adornments of whatsoever nature, and the Council will have the right to remove non-combustible material from the coffin.

(e) Before a cremation is permitted to take place, the applicant or his or her representative will be obliged to produce a certificate certifying that the coffin complies with subsections (b) and (c) above.

(f) No corpse may be removed from any coffin for the purpose of incineration and a coffin may not be opened in the crematorium except with the permission of the Council, which must not be unreasonably withheld.

**CHAPTER 5**

**PRIVATE CEMETERIES AND CREMATORIA**

**Duties of proprietors**

**20.**(1) The proprietor of a private cemetery or crematoria for which the consent of the Council has been obtained must –

(a) comply with –

(i) any special conditions which may be determined by the Council in respect of private cemeteries and crematoria from time to time; and

(ii) the relevant provisions of this By-law and any other applicable law;

(b) maintain the grounds, fences, gates, roads, paths and drains in good order and condition and clear of weeds and overgrowth;

(c) allow an authorised official of the Council to enter or inspect the cemetery or crematoria and all records kept in connection therewith; and

(d) appoint a suitably qualified person to manage the cemetery and to keep the records.

(2) The owner of a private cemetery, a private crematorium, or private property may on reasonable grounds, refuse permission to have a corpse interred or cremated in the cemetery or crematorium.

**CHAPTER 6**

**SECTIONS IN A CEMETERY**

**The Council may establish sections in a cemetery**

**21.**(1) The Council may establish one or more of the following sections in its cemeteries:

(a) Monumental section

(b) Berm section

(c) Landscape section

(d) Memorial square

(e) Garden of remembrance

(f) Crematoria or corpse reduction facility

(g) Mausolea

(h) Surface grave units

(i) Denominational section

**Monumental section**

**22.**(a) A monumental section is a grave section in a cemetery set aside for the erection of memorial work at graves.

(b) The Council may in the course of time level all graves and plant grass thereon.

(c) 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.

**Berm section**

**23.**(a) A berm section is a grave section in a cemetery set aside by the Council where memorial work is restricted to a headstone only, with ground cover planted over the extent of the grave

(b) Headstones may contain two receptacles for flowers

(c) Headstones must be erected on the concrete plinth supplied by the Council or on a suitable foundation to support the headstone, which must be embedded horizontally at ground level in the position indicated by the Council.

(d) No kerb or frame demarcating the grave or a slab covering is permitted

(e) 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.

**Landscape section**

**24.**(a) A landscape section is a grave section in a cemetery set aside by the Council where memorial work is restricted to a horizontally placed plaque or memorial slab only, with ground cover planted over the extent of the grave.

(b) No object other than the memorial plaque or slab may be placed on the grave

(c) No kerb or frame demarcating the grave or slab covering is permitted

(d) Flowers, foliage, wreaths or any adornment may be placed upon or beside the plaque or memorial slab, except in the case of graves that have not yet been levelled.

**Gardens of remembrance**

**25.**(a) A garden of remembrance is a section in a cemetery set aside for the erection of memorials to an individual, a group of people or an event, memorial walls, niche walls, the establishment of ash graves and the scattering of ashes;

(b) Flowers and wreaths may be placed only on the places provided therefore.

**Crematorium and corpse reduction facility**

**26.** The Council may set aside sections in a cemetery for the establishment of a crematorium and a corpse reduction facility

**Memorial Square**

**27.**(a) A memorial square is a grave section in a cemetery set aside for the interment and memorialisation of heroes and celebrated persons

(b) No person may be interred or commemorated in this section unless the status of a hero or celebrated person has been confirmed by the Council in writing.

**Mausolea**

**28.** A mausolea section may be established in a cemetery in which corpses are interred in mausolea.

**Surface grave units**

**29.** A surface grave unit may be established in a cemetery in which corpses are interred in surface grave units.

**Denominational section**

**30.**(a) The Council may set aside denominational sections in its cemeteries for the exclusive use of a specific faith, religious or cultural group where the burial requirements of such group dictates a physical arrangement of graves with reference to orientation, density and depth other than be the norm.

(b) The allocation of such sections may not be to the detriment of the burial requirements of the general residents.

**CHAPTER 7**

**ERECTION AND MAINTENANCE OF MEMORIAL WORK AND CARE OF GRAVES**

**Consent of the Council**

**31.**(1) No person may bring any memorial into a cemetery or erect, alter, paint, renovate, decorate, remove or otherwise interfere with any memorial work or cut any inscription thereon in a cemetery without the written consent of the Council and payment of the required fee, other than for the purpose of routine maintenance work.

(2) Before erecting memorial work an application must be submitted to the Council for approval at least five working days prior to the proposed erection, such an application must include –

(a) a plan which gives an indication of its measurements and its position;

(b) specification of the material which the memorial work is to be constructed; and

(c) the wording of the epitaph.

(3) The Council may approve the application referred to in subsection (2) with or without conditions as it deems necessary, and may refuse the application if it does not comply with the requirements in respect of memorial work as determined by the Council.

(4) No person may bring into the 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 the work to be carried out has been submitted.

(5) The consent for the proposed work is valid only for a period of twelve months from the date on which it is approved, and in the event of the memorial work not being erected within the prescribed time a new application must be submitted.

**Requirements for the erection of memorial work**

**32.**(1) A person erecting a memorial work must comply with the following –

(a) proceedings must be of such a nature that no damage may be caused to any structure or offence given;

(b) with the applicants permission, the name of the maker or manufacturer can be displayed on a memorial work, but no address or any particulars may be added thereto, and the space utilised for it may not be larger that 40 x 100 mm;

(c) all unused material after the completion of the work must be removed and the adjoining areas must be left neat and clean; and

(d) any damage caused must be repaired at the cost of the person responsible for such damage and should the responsible person fail to affect such repair, after due notice, the Council may undertake the remedial work at the cost of the person who erected the memorial work.

**Position, movement and removal of memorial work**

**33.**(a) 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 in terms of an approved plan.

(b) Should the condition referred to in subsection (a), the Council may on written notice to such person, alter the position of the memorial work and recover the costs of the alteration from the person who erected the remedial work.

(c) In the instance where a memorial work has originally been placed in a certain position with the express consent of the Council, any alteration of the position in terms of the provisions of this section executed at the expense of the Council.

**Work and maintenance in respect of memorial work**

**34.**(a) Any person engaged in any work, must effect such work under the supervision of the Council.

(b) Should the person who erected a memorial work allow such memorial work to fall into such a state of disrepair that it may cause danger or deface the cemetery, the Council may serve a notice of compliance on such a person.

(c) The Council may, after due notice, at any time change or alter the position of a memorial work in a cemetery placed without the express consent of the Council and recover the cost thereof from the owner of the memorial work.

(d) A memorial work placed, built, altered, decorated, painted or otherwise dealt with in a cemetery in such a manner that any of the provisions in this By-law are contravened, may be removed by the Council at the cost of the person responsible, after due notice, without payment of any compensation.

**Damaging of a memorial work**

**35.**The Council is not responsible for any damage that may occur to a memorial work that is not due to the negligence of the authorised officials of the Council.

**Vehicle and tools**

**36.**(a) Every person engaged with work upon a grave or plot must ensure that the vehicles, tools or appliances comply with the provisions of this By-law and any other applicable law, and do not block roads or pathways.

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

**Complying with the directives of the Council**

**37.** A person carrying out work within a cemetery must in all respects comply with the directives of the Council.

**Times for bringing in material and doing work**

**38.**(a) No person may bring memorial work or material in connection therewith, or do any work other than the dismantling of memorial work for the interment purposes within a cemetery except during the times determined by the Council.

(b) No person may engage in work which may disturb or intrude upon a funeral for the duration of the funeral.

**Subsiding soil conditions**

**39.** The Council is not liable for damage to memorial work resulting from any subsiding soil.

**Production of written consent**

**40.**(1) A person charged with performing work or on his or her way to or from work within a cemetery must upon demand from the Council or its authorised official, produce the written consent issued to him or her.

**CHAPTER 8**

**RE - OPENING OF GRAVES AND EXHUMATIONS**

**Application for exhumation**

**41.**(1) An application for exhumation must be submitted to the Council and must include the following –

(a) the completed application form;

(b) a copy of the death certificate; and

(c) a letter or affidavit from the next of kin of the deceased consenting to the exhumation.

**Conditions of exhumations**

**42.**(1) No person may exhume or cause to be exhumed a body without the written consent of the –

(a) Minister;

(b) the Council;

(c) the provincial Department of Health;

(d) the Administrator of cemeteries;

(e) the Council’s Medical Officer of Health or

(f) by an order of a court having jurisdiction over such matters.

(2) Whenever an exhumation is to take place, the officer-in-charge must inform the Provincial Commissioner of the South African Police Services.

(3) A member of the South African Police Services must always be present when an exhumation is being conducted.

(4) The written consent referred to in subsection (1) must be submitted to the environmental health practitioner at least five working days prior to the approved exhumation date.

(5) The environmental health practitioner may impose conditions with respect to the exhumation and the exhumation may only proceed when such conditions have complied with.

(4) An exhumation must not take place when the cemetery is open to the public and must take place under the supervision of the officer-in-charge.

(5) If remains are to be exhumed from any grave, only the undertaker under the supervision of the officer-in-charge, may cause the grave to be excavated for such exhumation;

(6)(a) If a grave is to be excavated for exhumation, the officer-in-charge must be given 48 hours written notice before the time of exhumation, and

(b) The authority referred to in paragraph (1)(d) of this Section and the prescribed fee must accompany such notice.

(7) A person who wishes to exhume the remains of an indigent person must pay the costs incurred by the Council at the time of burial, to the Administrator of Cemeteries.

(8) The person carrying out the exhumation must ensure that the body and grave are properly disinfected and deodorized.

(9) The remains of the deceased person must, pending reburial or cremation be kept at a registered funeral undertakers premises.

(11) The person carrying out the exhumation must provide a suitable receptacle for each body or remains.

(12) The South African Police Services must -

(a) if there is proof of illegal burial immediately exhume the body; and

(b) take it to a government mortuary for investigation.

(13) A grave of victims of conflict and a grave which is older than 60 years may only be exhumed with the permission of the South African Heritage Resources Agency.

(14) A Commonwealth war grave may only be exhumed in accordance with the provisions of section 3 of the Commonwealth War Graves Act, 1992.

**Exhumation and reburial**

**43.**(1) The Council may, if a body has been buried in contravention of this By-law, cause the body to be exhumed and re-buried in another grave.

(2) The relatives of the deceased must be –

(a) notified of the intended exhumation and re-burial; and

(b) allowed to attend.

**Screening of exhumation**

**44.** A grave from which a body is to be exhumed must be screened from the view of the public during the exhumation.

**Emergency exhumations**

**45.** No body may be exhumed less than eighteen months after burial, other than in compliance with a court order.

**Reduction burial**

**46.**(1) The Council may, after a lapse of a minimum period of 10 years after the most recent burial in a grave, exhume the remains of a corpse for the purposes of the reduction of the corpse and rebury the remains of that corpse in the same grave, in a smaller coffin, or at a greater depth subject to the conditions that –

(a) any holders of private rights in that grave and the next of kin or closest surviving relative of the deceased have given their consent.

(b) in respect of any grave where no private rights have been acquired, where the next of kin, or the closest surviving relative have given their consent

**CHAPTER 9**

**THE ADMINISTRATION AND CONTROL OF CEMETERIES**

**Appointment of an officer in charge**

**47.**(a) The Council must appoint an officer in charge for each cemetery to control and administer the cemetery

(b) The officer in charge must take into account the customs of the deceased person and the persons responsible for the interment and must accommodate these within the framework of this By-law.

**Children**

**48.** No child under 12 years of age may enter a cemetery unless he or she is under the supervision and care of a responsible adult person.

**Keeping to path**

**49.** All persons are required to keep to the paths indicated in a cemetery, where such paths exist.

**Prohibited conduct within a cemetery**

**50.**(1) No person may –

(a) commit or cause a nuisance within a cemetery

(b) ride an animal , cycle, or skateboard for recreational purposes or partake in any other form of recreational or sporting activity within any cemetery, unless otherwise determined by the Council.

(c) With the exception of a blind person, bring into or allow an animal to wander inside any cemetery, provided that dogs on leashes will be permitted unless otherwise determined by the Council;

(d) Plant, cut, pick or remove a tree, plant, shrub or flower without the permission of the Council;

(e) Hold or take part in a protest in any cemetery

(f) Interrupt or disrupt –

(i) the performance of duties of an authourised official or workman employed by the Council

(ii) a funeral undertaken in a cemetery

(g) obstruct, resist or oppose the officer in charge on the course of his or her duty, or refuse to comply with an order or request which the officer in charge is entitled under this By-law to make;

(h) mark, draw, scribble, paint or place an object on a wall, building, fence, gate, memorial work or other erection within any cemetery other than for official purposes;

(i) use water for any form of gardening without the permission of the Council;

(j) leave any rubbish, soil, stone, debris, garbage or litter within any cemetery;

(k) in any way damage, deface or desecrate any part of a cemetery or anything therein;

(l) enter or leave a cemetery, except by an entrance or exit provided for these purposes;

(m) solicit or conduct any business, order, exhibit, distribute or leave a tract, business card or advertisement within a cemetery, other than in the area designated for such purposes by the Council and with the prior permission of the Council;

(n) treat a grave or memorial work with disrespect, such as climbing or sitting on a grave or memorial work;

(o) enter an office, building or fenced place in a cemetery except in connection with lawful business;

(p) expose a corpse or part thereof in a cemetery;

(q) exceed the prescribed limit of 20 km per hour in a cemetery;

(r) use any cemetery as thoroughfare

(s) allow or cause any animal to enter any cemetery with the exception of an officer in charge, living on site and who is keeping pets with the prior approval of the Council

(t) bring any alcohol into or consume any alcohol in a cemetery or discharge any firearms in a cemetery except in the case of the police, state or military funeral;

(u) make or ignite a fire in a cemetery without the prior permission of the Council;

(v) hunt or harm any animals or birds;

(w) graze domestic animals in unused areas amongst the graves or;

(x) bring into a cemetery excavation equipment, saws or metal detecting equipment, other than with the permission of the Council; and

(y) conduct driving lessons in a cemetery.

(2) An authorised official of the Council working in any cemetery may not enter into an agreement with a member of the public for the purpose of undertaking work in a cemetery on behalf of such a person, such as maintaining or digging a grave or any other related work.

(3) The Council may impound an animal found in any cemetery.

(4) Gazebos larger than two metres by three metres may not be erected in a cemetery without the prior permission of the Council.

**CHAPTER 10**

**USE AND CLOSURE OF DISUSED CEMETERIES**

**Use and closure of disused cemeteries**

**51.**(a) Despite any provision of this By-law, and subject to the provisions of subsection (f) the Council may use any cemetery or portion thereof, of which it is the cemetery authority, which has been disused for a period of not less than 20 years for such a purpose as will not desecrate the ground and any human remains or any memorials in such a cemetery.

(b) Despite any provision of this By-law, and subject to the provisions of subsection (f), the Council may close any cemetery or any part thereof, of which it is the cemetery authority, which has been disused for a period of not less than 20 years, or if good closure for such closure exists.

(c) Despite any provision in this By-law, and subject to the provisions of subsection (f), the Council may use a cemetery or portion thereof, which has been used for another purpose in terms of subsection (a), or reopen any cemetery or portion thereof, which has been closed in terms of subsection (b).

(d) The Council may, subject to the provisions of subsection (f), 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 by the competent authority or authorities as the case may be.

(e) All rights possessed or enjoyed by any person in respect of a cemetery contemplated in subsection (a) and (b) will thereupon cease.

(f) Before acting in terms of subsection (a), (b), (c) and (d) the Council must give notice of its intention to do so.

**CHAPTER 11**

**MISCELLANEOUS**

**Injuries and damages**

**52.**(a) A person using a cemetery do so at his own risk, and the Council accepts no liability whatsoever for any personal injuries sustained by such person or for any loss of or damage to such person's property relating to or resulting from the aforementioned usage of the cemetery.

(b) A person using a cemetery accepts full responsibility for any incident, damages or injuries that may be caused by or that may result from the aforementioned use of the cemetery and he or she accordingly indemnifies the Council, its members, employees or agents, whether in personal or official capacity, against liability for all claims from whichever nature by himself, his or her dependants or third parties in respect of any patrimonial loss, consequential damages, injuries or personal prejudice that may be suffered or sustained in connection with or resulting from such a person's use of a cemetery. The aforementioned indemnity also applies to injuries sustained by employees of the Council while on duty at the cemetery, as well as damages to Council property at the cemetery.

**Fire-arms and traditional weapons**

**53.** No fire-arms and traditional weapons may be allowed in a cemetery.

**Complaints**

**54.** Any person wishing to lodge a complaint must lodge such complaint, in writing with the Director.

**Charges**

**55.** The charges set forth in the tariff in respect of the various items therein contained, must be paid to the Council in advance.

**Rights on Graves**

**56.** No person may acquire any right to or interest in any ground or grave in any cemetery.

**Consents, Notices and Orders**

**57.** Any written consent, notice or other order issued by the Council in terms of this By-law, with the exception of consent by the Director or any officer authorised by him and will be prima force evidence of the contents of such a signed consent, notice or other order.

**Notice of compliance and representations**

**58.**(1) A notice of compliance must state –

(a) the name, residential and postal of the address of the person;

(b) the nature of the state of disrepair;

(c) sufficient detail to enable compliance with the notice, the measures required to remedy the memorial work;

(d) that the person must, within a specific 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 subsection (d) is an offence; and

(f) that written representations, as contemplated in subsection (3) may within the time period stipulated in subsection (d) , be made to the Council at a specified place.

(2) The Council, 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 cause and state of disrepair;

(c) any measures propsed by the person 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 subsection (1)(f) make representations, in the form of a sworn statement or affirmation to the Council 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 Council condones the late lodging of the representations.

(5) The Council must consider the representations and any response thereto by an authorised official or any other person.

(6) The Council may, on its own volition, conduct any further investigations to verify the facts necessary, and the results of the investigation 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 Council must also consider the further response.

(7) The Council must, after consideration of the representations and responses, 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 Council;

(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 Council.

(9) If the notice of compliance is confirmed, in whole or in part, or is altered but not set aside, the Council will inform the person that he or she must discharge the obligations set out in the notice within the time specified therein.

(10) Where there has been no compliance with the requirements of the notice within the time specified therein, the Council may take steps as it deems necessary to repair the monumental work and the cost thereof must be paid to the Council by such person.

**Religious Ceremonies**

**59.**(a) The members of any religious denomination may conduct religious ceremonies in connection with any interment of memorial service subject to the control and by-laws of the Council.

(b) No animal may be slaughtered on the premises of the cemetery regardless of any religious ceremony which may require an animal to be slaughtered.

**Hearses and vehicles at Cemeteries**

**60.**(a) No person may cause any hearse or vehicle, as defined by the National Road Traffic Act, 1996 (Act No. 93 of 1996) while within a cemetery to depart from the road.

(b) Every hearse or vehicle must leave the cemetery by the route indicated by the caretaker.

(c) The cemetery is a public place and all laws applicable to the driving of a vehicle and the use of a public road will be applicable inside the premises of the cemetery.

**Exposure of Bodies**

**61.** No person may convey a dead body, which is not covered, or whose any such body or any part thereof in any street, cemetery or public place.

**Instruction of Caretaker**

**62.** Every person taking part in any funeral procession or ceremony must comply with the directions of the caretaker while such person is within a cemetery.

**Music Inside Cemetery**

**63.** Only sacred singing will be allowed in any cemetery, except in the case of police and military funerals.

**Interments Attended by large Numbers of People**

**64.** In any case where it is probable that an unusually large number of persons will be present at any interment, the person giving notice of such interment must notify the caretaker the day before the funeral.

**CHAPTER 12**

**UNDERTAKERS**

**Preparation of corpses**

**65.**(a) Corpses to be prepared only at funeral undertaker's premises in respect of which a certificate of competence has been issued

(b) Unless otherwise provided for in this bylaw, no person may prepare and/or store any corpse except on a funeral undertaker's premises in respect of which a certificate of competence has been issued and is in effect.

**Application for the issue or transfer of a certificate of competence**

**66.**(1)(a) Any person wishing to apply for a certificate of competence in respect of new funeral undertaker's premises will, not less than 21 days before submitting his application to the Council cause a notice of his intention to be published in English, and two other official South African languages in a newspaper that circulates in the area in which such premises will be or is situated.

(b) Such notice must contain information to the effect that an application for the issue of a certificate of competence in terms of this By-law is to be submitted to the Council and that any person who wishes to object to such use may lodge his or her objection, together with substantiated representations, with the Council in writing within 21 days of the date of publication of such notice.

(2) An application for the issue of a certificate of competence must be made to the Council in writing on the prescribed form and 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 including the effluent disposal system

(c) a plan of the premises on which north is shown indicating adjacent premises already occupied by the applicant or other persons and the purpose for which such premises are being utilized or are to be utilized;

(d) Particulars of any person other than the applicant or any of his or her employees who prepares or will prepare corpses on the premises;

(e) a contingency plan for the storage of corpses in the event of a refrigeration or cold room breakdown; and

(f) a cleansing and disinfection programme.

(g) details of registered health care waste remover, transporter and disposer

(3) The Council, when considering issuing a certificate of competence, may request from the applicant or any other person any such further information required.

(4) The Council will not issue or transfer a certificate of competence unless a complete inspection of the premises concerned has been carried out by an environmental health practitioner appointed by the Council and the environmental health practitioner’s report on such inspection, including recommendation on such issue or transfer, is in possession of the Council.

**Issue or transfer of certificate of competence**

**67.** When the Council is satisfied that the premises concerned –

(a) complies with all requirements laid down in this By-law and any other applicable legislation;

(b) are in all respects suitable for the preparation of corpses; and

(c) will not be offensive to any occupants of premises in the immediate vicinity of such premises, it will, on conditions as it may determine in respect of the funeral undertaker's premises concerned, issue a certificate of competence in the name of the applicant in such form as it may determine or will, by endorsement, transfer an existing certificate of competence to a new holder, as the case may be.

**Validity and transfer of certificate of competence**

**68.** A certificate of competence, excluding a provisional certificate of competence, is, on endorsement by the Council, be transferable from one holder to a new holder and such certificate is, if so endorsed, be valid from the date of which it was issued until it is revoked or suspended in terms of this bylaw.

**Issue of provisional certificate of competence**

**69.**(a) Notwithstanding the fact that the Council is not satisfied as contemplated in section 4 with regard to funeral undertaker's premises in respect of which a certificate of competence has been applied for, the Council may, in the case of existing funeral undertaker's premises and subject to such conditions as Council may determine, issue a provisional certificate of competence in respect of such premises.

(b) A certificate referred to in subsection (a) will only be issued if the Council is satisfied that the use of such funeral undertaker's premises does not and will not create a nuisance, and will be issued for a maximum period of six months to enable the applicant to alter such premises in order to comply with the provisions of this By-law.

(c) If, after the period referred to in subsection (b), the premises does not comply with the provisions of this By-law, the Council may revoke the provisional certificate of competence.

**Duties of holder**

**70.**(a) The holder must immediately inform the Council in writing if there are any changes in the particulars or circumstances supplied to the Council in the application for certificate of competence.

(b) A funeral undertaker must not dispose of a body in any place or premises other than a cemetery or crematoria registered in terms of the KwaZulu-Natal Cemeteries and Crematoria Act, 1996 (Act No. of 1996).

(c) The holder must comply with the provisions of this By-law, applicable legislation and any conditions imposed by the Council.

**Suspension or revocation of a certificate of competence or provisional certificate of competence**

**71.**(1) If the Council is of the opinion, on the strength of an inspection report and/or recommendation by a medical officer of health or environmental health practitioner, that there are reasonable grounds to suspect that –

(a) the funeral undertaker's premises concerned are utilized 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; or

(b) the premises concerned are utilized in contravention of the provisions of the Health Act, 2003 (Act No. 61 of 2003), this bylaw or other applicable legislation or any conditions imposed by the certificate of competence or provisional certificate of competence, the Council may in its discretion –

(i) revoke certificate of competence or provisional certificate of competent concerned;

(ii) suspend the certificate of competence or provisional certificate of competence concerned for such period as the Council may determine, to enable the holder to comply with the applicable legislation and/or conditions imposed; provided that if the holder fails to comply within the period stipulated in the notice of suspension, the Council may revoke the relevant certificate without further notice.

(2) A notice issued by the Council in terms of section 71(b)(ii) must be issued in writing, and then served on the holder.

(3) The suspension or revocation of a certificate of competence or provisional certificate of competence in terms of this bylaw will have the effect that, from the date of the notice of suspension or revocation –

(a) no preparation of any corpse must be performed on the premises concerned;

(b) no corpse must be received for preparation on the premises concerned; and

(c) no corpse must be preserved on the premises concerned and every corpse must immediately be removed to a mortuary under the control of the State, a provincial administration or the Councillor any other funeral undertaker's premises, provided that this bylaw will not be applicable and the said notice must not be so construed as to restrict any other business activity relating to the funeral undertaking profession including the sale of coffins and policies.

(4) Where the Council is of the opinion that a condition that gave rise to the revocation of a certificate as contemplated in this bylaw was corrected after such revocation, it may, on written application made by or on behalf of the holder, repeal such revocation by endorsement on the certificate concerned.

**Requirements relating to funeral undertaker's premises**

**72.**(1) Provision for the following must be made on a funeral undertaker's premises -

(a) a preparation room for the preparation of corpse;

(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 washing and cleaning of utensils and equipment inside the building;

(e) facilities for cleaning of vehicles on the premises; and

(f) facilities for loading and unloading corpses as contemplated in clause 72(6).

(2) No room on a funeral undertaker's premises must be used for any purpose other than the purpose for which it is intended.

(3) The preparation room -

(a) must be so designed as to –

(i) be separate from all other rooms on the premises and so as not to be directly accessible from or in view of any office or salesroom: provided that, where a preparation room on existing funeral undertaker's premises is so situated, the entrance thereto must be so concealed that the interior of the preparation room is completely out of sight of any person in any adjoining 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-covering an area of not less than 6 m2 for the first table of the kind referred to in section 72(3)(e) and 8m2 for each additional table; 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 a disposal system approved by the Council; and which, if it is replaced or laid after the date of commencement of this By-law, will be provided with half round filling where it meets the walls -

(i) must have walls the inner surfaces of which have a smooth finish and are covered with a light-coloured washable paint or other suitable, smooth, waterproof, light-coloured and washable material;

(ii) 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;

(iii) must contain not less than one table of stainless steel or glazed earthenware or other suitable 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;

(iv) must contain not less than one wash basin for each table, made of stainless steel or other suitable 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;

(v) 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; and

(vi) 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 change-room must contain at least the following –

(a) One hand-basin with hot and cold running water for every six employees or part thereof;

(b) Disposable towels, soap, nailbrushes and disinfectant; and

(c) Not less than one toilet for every 15 male employees or part thereof and not less than one toilet for every 15 female employees or part thereof employed at the funeral undertaker's premises concerned, provided that, where a separate urinal for men forms part of such facilities, one toilet plus one separate urinal must be permissible for every 30 men or part thereof.

(5) Refrigeration facilities such as refrigeration or cold chambers for the keeping of corpses, must be installed in or close proximity of such preparation room and –

(a) where refrigerators are used, it must be constructed of a material that does not absorb moisture, must be provided with removable trays and must be so designed as to drain into an approved drainage system and be easy to clean;

(b) be of such nature that the surface temperature of any corpse must be no higher than 50C during preparation. An accurate thermometer must be provided at the refrigerator or cold chamber and must be operational at all times.

(c) In instances where cold chambers are used, it must comply with sections 10(3)(a)(ii), (b)(ii), (c), (d) and (h) and must be provided with shelves manufactured from a material that does not absorb moisture and that is easy to clean; and

(d) Corpses are not be to be stored on top of each other and must be stored individually on the trays or shelves.

(6) The cleansing, loading and unloading facilities must consist of a paved area, screened from public view, with a drainage system into a gulley connected to a sewer system approved by the Council.

(7) The loading and unloading of corpses and the cleansing of vehicles must not take place anywhere except in the area contemplated in section 72(6).

(8) The funeral undertaker’s premises must be rodent-proof.

**Conveyance of Mortal Remains**

**73.** No person may convey any mortal remains –

(a) Unless the mortal remains have been sealed in an airtight container and placed in a non-transparent, sturdy, sealed coffin; or

(b) No coffin container in which the mortal remains have been placed may be conveyed unless –

(i) The outer surface of such coffin or container is free from any leakages or any other secretion matter emanating from such mortal remains; and

(ii) Offensive odours are absent.

**Hygiene**

**74.**(1) All health care waste generated must be stored, removed, transported and disposed of in accordance with Council’s Environmental Health Bylaws.

(2) Every holder of a certificate of competence relating to funeral undertaker's premises must –

(a) provide clean protective clothing consisting of surgical gloves, gumboots, plastic aprons so designed that the front hangs over the top of the gumboots, face masks and overcoats/overalls to all employees and all other persons involved in the preparation of corpses or post-mortems, and each such employee or other person must, at all times when so involved, wear such clothing;

(b) keep such premises free of pests and insects at all times;

(c) clean immediately after the preparation of any corpse, all working areas or surfaces at such premises where corpses are prepared;

(d) wash and disinfect all equipment used for the preparation of corpses immediately after use;

(e) wash, clean and disinfect all protective clothing that has been used on the premises on a daily basis;

(f) keep such premises clean and tidy at all times; and

(g) if a corpse has been transported without a moisture-proof covering, wash and disinfect the loading space of the vehicle concerned after such corpse has been removed.

**CHAPTER 13**

**APPEAL, EXEMPTIONS AND OFFENCES**

**Appeal**

**75.** A person whose rights are affected by a decision delegated by the Council may appeal against that decision by given written notice of the appeal and the reasons therefore in terms of section 62 of the Local Government: Municipal Systems, 2000 (Act No. 32 of 2000) to the Council within 21 days of the date of the notification of the decision.

**Exemptions**

**76.**(1) Any person may by means of a written application, in which the reasons are given in full, apply to the Council for exemption from any provision of this By-law.

(2) The Council 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 Council under subsection (2). If any activity is commenced with before such undertaking has been submitted to the Council, the exemption granted will be of no force of effect.

(4) If any condition of an exemption is not complied with, the exemption lapses immediately.

(5) The failure to comply with a condition of an exemption in terms of subsection (2) constitutes an offence.

**Offences and penalties**

**77.**(1) Any person –

(a) contravening or failing to comply with any of the provisions of this By-law;

(b) makes a false statement knowing it to be false or deliberately furnishes misleading information to an authorised official or employee of or for the council;

(c) threatens, resist, interferes with or obstructs an authorised officer or employee for or of the council in the performance of their duties or functions under this By-law,

will be guilty of an offence and will upon conviction by a court be labile to a fine not exceeding R 60 000, or imprisonment for a period not exceeding three years or both a fine as well as period of imprisonment, or such other fine or period of imprisonment which the Minister of Justice may from time to time determine in terms of the provisions of section 92 of the Magistrate's Courts Act. 1944 (Act No 32 of 1944).

(2) Any expense incurred by the Council as a result of a contravention of this By-law or in the doing of anything which a person was directed to do under this By-law and which he or she failed to do, may be recovered by the Council from the person who committed the contravention or who failed to do such thing.

**CHAPTER 14**

**REPEAL OF BY-LAWS**

**Repeal of existing By-laws**

**78.** The Council’s existing Cemeteries, Cremetoria and Undertakers By-laws are hereby repealed.

**Short title and commencement**

**79.** This By-law will be called the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Municipality Cemetery, Crematoria and Undertakers By-Law 20\_\_\_.