

DRAFT

CITY OF CAPE TOWN

CEMETERIES, CREMATORIA AND FUNERAL UNDERTAKERS BY-LAW

BY-LAW NO of 2009

To provide for the control, regulation and development of cemeteries, and to provide for the disposal of corpses and the interment of human remains, in a dignified manner.

PREAMBLE

WHEREAS in terms of Part B of schedule 5 of the Constitution of the Republic of South Africa 1996 cemeteries, crematoria and funeral parlours are local government matters;

AND WHEREAS section 73 of the Local Government Municipal Systems Act, 2000 (Act No. 32 of 2000) places a general duty on municipalities to give effect to the provisions of the Constitution;

The Municipal Manager of the City of Cape Town hereby publishes, in terms of section 13(a) of the aforesaid Act the Cemeteries, Crematoria and Funeral Undertakers By-law for the City of Cape Town as approved by its Council, as set out hereunder.

TABLE OF CONTENTS

1. Definitions in this By-law
2. Assignment
3. Applicable Legislation

CHAPTER 2: DISPOSAL AND INTERMENT OF A BODY

4. Methods of disposal of a body
5. Consent required for interment
6. Interment times
7. Coffin
8. Construction material of coffin
9. Coffin to be covered
10. Dimensions of grave apertures
11. Indigent persons
12. Register
13. Right of burial

CHAPTER 3: FUNERALS

14. Religious and other ceremonies
15. Music inside cemetery
16. Interment attended by more than fifty people
17. Hearse and other vehicle at cemetery
18. Instruction of officer in charge

CHAPTER 4: FUNERAL UNDERTAKERS

19. Funeral undertakers

CHAPTER 5: THE ADMINISTRATION AND CONTROL OF CEMETERIES

20. Appointment of Officer in Charge
21. Hours of admission for public
22. Children
23. Keeping to path
24. Prohibited conduct within any cemetery

CHAPTER 6: PRIVATE CEMETERIES

25. Parts of By-law applicable
26. Duties of proprietors

CHAPTER 7: SECTIONS IN A CEMETERY

27. City may establish sections
28. Monumental section
29. Berm section
30. Landscape section
31. Garden of Remembrance
32. Crematorium section
33. Heroes Acre
34. Mausolea section
35. Surface Grave Units section
36. Denominational section

CHAPTER 8: ERECTION AND MAINTENANCE OF MEMORIAL WORK AND CARE OF GRAVES

37. Consent of City
38. Requirements for erection of memorial work
39. Position, movement and removal of memorial work
40. Work and maintenance in respect of memorial work
41. Damaging of memorial work
42. Vehicle and tools
43. Complying with City's directions
44. Times for bringing in material and doing work
45. Unstable or saturated soil conditions
46. Production of written permission
47. Care of grave

CHAPTER 9: EXHUMATION AND REDUCTION BURIAL

48. Application for exhumation
49. Conditions of exhumation
50. Emergency exhumations
51. Wrongful burial
52. Reduction burial

CHAPTER 10: USE AND CLOSURE OF DISUSED CEMETERIES

53. Use and closure of disused cemeteries

CHAPTER 11: CREMATIONS

54. Applications for cremation
55. Cremations
56. Coffins
57. General requirements for memorials and memorial work
58. Disposal of ashes

CHAPTER 12: MISCELLANEOUS

59. Authentication and service of order, notice or other document
60. Complaint
61. Notice of compliance and representations
62. Costs
63. Appeal
64. Charges
65. Offences and Penalties
66. Limitation of liability
67. Exemptions
68. Liaison forums in community
69. Revocation of By-laws
70. Short title and commencement

~~~~~

## 1. Definitions in this By-law

In this By-law, unless the context otherwise indicates —

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

**"approved"** means approved by the City;

**"ashes"** means the cremated remains of a corpse;

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

**"berm section"** means a grave section in a cemetery set aside by the City where memorial work is restricted to a headstone only, with lawn planted over the length of the grave;

**"burial"** means when land is excavated for the interment of a body or ashes or when a structure is employed for the interment of a body or ashes;

**"burial order"** means an order issued in terms of the Births and Deaths Registration Act 51 of 1992;

**"crematoria"** means all crematoria under the management and control of the City;

**"cemetery"** means any land containing one or more graves, or utilised for the interment of ashes;

**"City"** means the City of Cape Town established in terms of section 12 of the Local Government: Municipal Systems Act, 1998 (Act No. 117 of 1998) by Provincial Notice No. 479 dated 22 December 2000;

**"City Parks"** means the Department of City Parks in the Directorate: Community Services in the City of Cape Town;

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

**"council"** means the council of the City of Cape Town or any political structure, political office bearer, councillor or any staff member acting under council's delegated or sub-delegated authority;

**"cremation"** means the process whereby a corpse is reduced by fire;

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

**"corpse reduction"** refers to processes used to reduce corpses including cremation, promession and biodegradable process;

**"director"** means the Director of the Department of City Parks, Directorate: Community Services of the City of Cape Town;

**"environmental health practitioner"** means a person appointed as such in terms of the Health Service Professions Act 56 of 1974;

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

**"funeral undertaker"** means any person, organisation or corporate body in the business of, or which undertakes the burial of corpses for gain;

**"funeral undertaker's premises"** has the meaning assigned to it in regulation 1 of the regulations;

**"garden of remembrance"** means a section of a cemetery set aside for the erection of memorial work, niche walls, the establishment of ash graves and the scattering of cremated remains;

**"grave"** includes any place, whether wholly or partly above or below ground level in which a corpse is permanently interred or intended to be permanently interred, whether in a coffin or other receptacle or not, and also includes any monument, tombstone, cross, inscription, rail, fence, chain, erection or other structure of whatsoever nature forming part of or appurtenance to such grave.

**"hero"** means a person who is conferred the status of a hero in writing by Council;

**"heroes acre"** means a grave section in a cemetery set aside by the City in a cemetery for the interment and/or commemoration of a hero;

**"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 place;

**"landscape section"** means a grave section in a cemetery set aside by the City where memorial work is restricted to a horizontally placed plaque or a memorial slab, with lawn planted over the length of the grave;

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

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

**"memorial work"** means any headstone, monument, plaque, other work or object, erected or intended to be erected in a cemetery to commemorate a deceased person, and includes a kerb demarcating a grave; a slab covering a grave; and wooden and/or steel crosses;

**"multiple burial"** means subsequent interments in the remaining depth of a grave;

**"niche"** means a compartment in a structure in a cemetery, designed for the placement of ashes;

**"niche wall"** means a wall or structure containing niches;

**"officer in charge"** means the authorised official whom the City appoints from time to time in a supervisory capacity with regard to a cemetery or crematorium;

**"policy"** means any policy which may be published by the City from time to time;

**"promession"** means the process whereby the corpse is disposed of by

freeze drying;

"**prescribed fee**" means a fee as determined by the City;

"**private cemetery**" means land which is used as a cemetery, but not owned by the City;

"**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;

"**reduction burial**" refers to the making of a grave available for a subsequent interment after a specified period;

"**regulations**" means the regulations governing Funeral Undertakers' Premises, made under sections 33 and 39 of the Health Act 63 of 1977, and published as Government Notice No. 237 of 8 February 1985.

"**surface grave units**" means an above-ground burial system which employs prefabricated burial chambers to accommodate the body and the coffin, with such chambers layered above the normal ground level;

## 2. **Assignment**

- (1) If any provision in this By-law vests or imposes any power, function or duty of the City in or on an employee of the City and such power, function or duty has in terms of section 81(2) of the Local Government: Municipal Systems Act 32 of 2000 or any other law been assigned to a service provider, the reference to such employee must be read as a reference to the service provider or, where applicable, an employee of the service provider authorised by it.

## 3. **Applicable Legislation**

- (1) No person shall prepare any corpse except on funeral undertaker's premises, which shall comply with the regulations.

## **CHAPTER 2**

### **DISPOSAL AND INTERMENT OF A BODY**

## 4. **Methods of disposal of a body**

Subject to the applicable provisions of this By-law, and any other applicable law, a body may be disposed of by:

- (1) In-ground burial;
- (2) Above-ground burial in accordance with policy which may be developed by the City regulating above-ground burial;
- (3) Cremation;
- (4) Promession and biodegradable process, in accordance with policy which may be developed by the City regulating these

methods of corpse reduction.

**5. Consent required for interment**

- (1) No person may dispose of a corpse in any manner other than those prescribed by the City in this By-law, and a person who wishes to dispose of a corpse must obtain the written consent of the City before he or she disposes of the corpse, and must comply with such requirements as set out by the City herein.
- (2) A person who wishes to obtain the consent as contemplated in subsection (1) must submit to the officer in charge an application in writing together with –
  - (a) the proof of payment of the prescribed fee;
  - (b) the death certificate of the corpse;
  - (c) a burial order issued in terms of the Births and Deaths Registration Act 51 of 1992;
  - (d) In the case of a funeral undertaker, the certificate of competence issued in terms of the regulations, proof of registration on the database of City Parks referred to in section 19(1) below, and in the case where the burial order has been issued by a funeral undertaker, proof of authorization in terms of section 4 of the Births and Deaths Registration Act 51 of 1992.
  - (e) an affidavit by the next of kin of the deceased, or where not practicable, 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 –
    - (i) who at the time of his or her death was suffering from a communicable disease, this must be indicated in the application;
    - (ii) who, at the time of his or her death had, a pacemaker, this must be indicated in the application.
  - (g) details of cultural or religious practices that need to be adhered to, the requirements of which are not provided for in this By-law.
- (3) The officer in charge may approve the application; approve the application on the conditions set out in the approval; or refuse the application.
- (4) An application for interment must be submitted to the City not later than 15:00 on the day before the intended interment or, where the grave exceeds the standard size, not later than 15:00 two days before the intended interment.
- (5) Should any alteration be made in respect of the day or hour previously

fixed for an interment, or interment be cancelled, in the instance where the City is responsible for the digging of a grave, notice of the alteration must be given to the officer in charge at the cemetery at least eight hours before the time fixed for the interment. No refund will be made on monies paid in respect of the opening of an existing grave.

- (6) The City reserves the right to inspect the contents of a coffin before interment.
- (7) The City may refuse a person, including a funeral undertaker, permission to inter a corpse if relevant documentation required by the City has not been submitted to the City prior to the interment.
- (8) A person who inter a corpse without the written consent of the City commits an offence.

## **6. Interment times**

- (1) Interments shall take place at times determined by the Director from time to time.
- (2) A person contemplated in section 5(2) will be allocated an interment time by the officer in charge and interments that are not undertaken within the time allocated will result in such interment being postponed until such time as an alternative interment time is available without inconveniencing other interments taking place within the time allocated.
- (3) Despite the provisions of subsection (1), the officer in charge to whom an application is made may, if the case is one of emergency or the custom or conventions of a religious or cultural group, permit interment outside the times contemplated in subsection (1) in which case an additional fee may be charged.
- (4) A person who inter a corpse at any time other than a time allocated in terms of subsection (2) or (3) commits an offence.

## **7. Coffin**

- (1) A coffin must be used for any burial of a corpse except where the officer in charge is of the view that religious beliefs prohibit its use.
- (2) Subject to the provisions of subsection (3), 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 person mentioned in section 5(2).
- (3) A mother and child who died during childbirth may be contained in one coffin, if the consent of the officer in charge has been obtained; and the prescribed fees have been paid.
- (4) If there is more than one body in a coffin, each body must be contained in a separate body bag.

- (5) A person who contravenes subsection (1), (2), (3) or (4) commits an offence.

**8. Construction material of coffin**

- (1) A coffin interred in a grave should insofar as this is possible be constructed of natural wood or other non-toxic, perishable material, and shall conform to any policy which may be published by the City from time to time in respect of the construction material of coffins.

**9. Coffin to be covered**

- (1) The person mentioned in section 5(2), must ensure that a coffin, upon being placed in a grave, is covered with at least 300mm of earth prior to the conclusion of the ceremony.

**10. Dimensions of grave apertures**

- (1) All graves within the City's cemeteries shall comply with the dimensions set out hereunder: There shall be two grave aperture sizes with the following dimensions:

(a) **Large Grave:**

|          |  |         |
|----------|--|---------|
| Length:  |  | 2 250mm |
| Breadth: |  | 750mm   |

(b) **Small Grave:**

|          |  |         |
|----------|--|---------|
| Length:  |  | 1 350mm |
| Breadth: |  | 535mm   |

- (2) All graves shall be a minimum depth of 1 400mm.
- (3) Any person requiring an aperture for an interment in a grave of a size larger than the standard dimensions and depth specified above in subsection (1) must, when submitting an application in terms of section 5, specify the measurements of the coffin and the depth, and pay such charges or fee as prescribed by the City from time to time in this regard.
- (4) Where one coffin has been buried on top of another coffin, there must be at least 300mm of soil between the coffins.
- (5) On completion of an interment it is the duty of the person mentioned in paragraph 5(2), or persons who dug the grave, to clear the surrounding areas including pathways and graves of all soil, debris and other matter or material exposed by the digging of the grave (e.g. rocks, roots, rubble, etc). The person who arranged the interment must, in addition,

take all reasonable steps to ensure that no damage occurs to surrounding property during the interment, and/or ceremony, including any collapse of grave walls and take steps to prevent such collapse.

- (6) The City has the right to flatten any area, on or surrounding any grave.

#### 11. **Indigent persons**

- (1) A person making application for an indigent person's burial must make a declaration to that effect.
- (2) An indigent person may be interred according to the City's policy applicable to indigent persons.

#### 12. **Register**

- (1) The City must keep a record of all interments, and the record must contain:
  - (a) The particulars of the person who requested the interment;
  - (b) the particulars of the deceased person whose corpse is to be interred, such as the name, address, and identification number;
  - (c) the date of the interment; and the number of the grave in which the corpse or ashes is interred or the location of the receptacle where the ashes have been placed.

#### 13. **Right of burial**

- (1) No person shall acquire any right including a right of burial in any ground or grave in a cemetery owned by the City, other than such rights or interests as may be obtainable under this By-law.
- (2) The determination of the identity of the holder of existing rights to further burials in existing graves shall be determined with reference to the City's register.
- (3) On application in terms of section 5 above, and on payment of the prescribed fee, a person may acquire the right of burial in a public grave.
- (4) On application in terms of section 5 above, and on payment of the prescribed fee, a person may acquire the exclusive right to multiple burials of an identified family member or members in the same grave, provided that this right will lapse after a period not exceeding ten years or the burial of the family member or members identified as aforesaid in an alternative grave, whichever occurs sooner.
- (5) The right to multiple burials specified in subsection 4 above shall not be renewable and shall not be transferable to a third party.
- (6) The right to multiple burials specified in subsection 4 is conditional on the suitability of the grave for additional burials as determined by the

officer in charge.

### **CHAPTER 3 FUNERALS**

#### **14. Religious and other ceremonies**

- (1) The members of a religious denomination may without prior permission and during the interment and at the grave, conduct a religious ceremony in connection with an interment or memorial service, which ceremony may not last more than the time period determined by the Director.

#### **15. Music inside cemetery**

- (1) Music and singing shall be permitted in a cemetery, provided that it shall not be unduly loud or disturbing.
- (2) The officer in charge must be informed of the nature of the music and singing to take place at a cemetery and his or her prior consent must be obtained.

#### **16. Interment attended by more than fifty people**

- (1) In any instance where it is probable that more than 50 people will be present at an interment, the person submitting an application in terms of section 5, must notify that fact to the officer in charge at least 24 hours before the funeral.

#### **17. Hearse and other vehicle at cemetery**

- (1) No hearse or other vehicle may enter a cemetery without the prior permission of the officer in charge.
- (2) No hearse or other vehicle may use any route to enter or proceed within a cemetery, other than the routes set aside for that purpose.

#### **18. Instruction of officer in charge**

- (1) A person taking part in a funeral procession or ceremony in a cemetery must follow the instructions by the officer in charge.

## **CHAPTER 4 FUNERAL UNDERTAKERS**

### **19. Funeral undertakers**

- (1) All funeral undertakers that wish to operate as such within the jurisdiction of the City are required to register on a database with City Parks.
- (2) All funeral undertakers, when registering on the database referred to in section 1, shall be required to sign a memorandum of understanding in which it is confirmed that the funeral undertaker is familiar with and will abide by this By-law, and all polices and fees structures in terms of this By-law.
- (3) All information supplied by a registered funeral undertaker in any application submitted in terms of this By-law shall be true and correct.
- (4) A funeral undertaker shall only transport a corpse in a roadworthy, closed vehicle, suitable for such purpose and which meets the requirements determined by the Principle Environmental Health Officer.
- (5) In the event of any funeral undertaker, once registered, breaching any provision of this By-law, policy or fee structure in terms of this By-law, the Director will, after due notice has been given, be entitled to cancel the registration of the funeral undertaker, and suspend the funeral undertaker from further burials in cemeteries within the jurisdiction of the City.
- (6) Any registered funeral undertaker that breaches subsection (3) and (4) commits an offence.

## **CHAPTER 5 THE ADMINISTRATION AND CONTROL OF CEMETERIES**

### **20. Appointment of Officer in Charge**

- (1) The Director must appoint an officer in charge for each cemetery to control and administer the cemetery.
- (2) 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.

### **21. Hours of admission for public**

- (1) The Director shall determine and cause the hours during which a cemetery or part thereof is open to the public to be displayed on a notice board placed at each entrance to the cemetery.

- (2) No person, excluding duly authorised workers or persons from the City, with permission, may be in or remain in a cemetery or part thereof before or after the hours when it is closed to the public as displayed in terms of subsection (1).
- (3) A person who breaches subsection (2) commits an offence.

**22. Children**

- (1) No child under 12 years of age may enter a cemetery unless he or she is under the care of a responsible adult person.
- (2) A person, who allows a child to enter a cemetery in contravention of subsection (1), commits an offence.

**23. Keeping to path**

- (1) All persons are required to keep to the paths indicated in a cemetery, where such paths exist.

**24. Prohibited conduct within any cemetery**

- (1) No person may –
  - (a) commit or cause a nuisance within any cemetery;
  - (b) ride an animal, cycle, or skateboard or partake in any other form of recreational or sporting activity, (with the exception of a wheelchair); within any cemetery, unless otherwise determined by the Director;
  - (c) with the exception of a blind person, bring into or allow an animal to wander inside any cemetery;
  - (d) plant, cut, pick or remove a tree, plant, shrub or flower without the permission of the officer in charge;
  - (e) hold or take part in a demonstration in any cemetery;
  - (f) interrupt or disrupt during the performance of his or her duties an official, or workman employed by the City or a funeral undertaken in any cemetery;
  - (g) obstruct, resist or oppose the officer in charge in 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 officer in charge;
  - (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 contained;
  - (l) enter or leave a cemetery, except by an entrance or exit provided for these purposes;
  - (m) solicit any business, order, exhibit, distribute or leave a tract, business card or advertisement within a cemetery, other than in an area designated for such purposes by the Director, and with the prior permission of the officer in charge;
  - (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 a part thereof in a cemetery;
  - (q) exceed the prescribed speed limit of 20 km per hour in a cemetery;
  - (r) use any cemetery as a thoroughfare;
  - (s) allow or cause any animal to enter any cemetery with the exception of a officer in charge, living on site and who is keeping pets with the prior approval of the City;
  - (t) bring any alcohol into or consume any alcohol in a cemetery;
  - (u) bring any firearms or other weapons, including traditional weapons into a cemetery; except in the case of a police or military funeral; or
  - (v) make or ignite any fire in a cemetery.
- (2) An employee of the City working in any cemetery may not agree with a member of the public for the purpose of undertaking work in the cemetery on behalf of such person, such as maintaining or digging a grave or any other related work.
- (3) The City may impound an animal found in any cemetery.

## **CHAPTER 6 PRIVATE CEMETERIES**

### **25. Parts of By-law applicable**

- (1) The provisions of sections 3, 7, 8, 10 and 12 and Chapter 9 of this By-law shall apply *mutatis mutandis* to private cemeteries.

### **26. Duties of proprietors**

- (1) The proprietor of a private cemetery for which the consent of the City

has been obtained must —

- (a) comply with –
    - (i) any special conditions which may be prescribed by the City in respect of private cemeteries 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 official of the City to enter or inspect the cemetery and all records kept in connection therewith;
  - (d) appoint a suitably qualified person to manage the cemetery and to keep the records.
- (2) The owner of a private cemetery or private property may refuse permission to have a corpse interred in the cemetery on reasonable grounds.

## **CHAPTER 7 SECTIONS IN A CEMETERY**

### **27. City may establish sections**

- (1) The City may establish one or more of the following sections in its cemeteries:
  - (a) Monumental section;
  - (b) Berm section;
  - (c) Landscape section;
  - (d) Heroes acre;
  - (e) Garden of remembrance;
  - (f) Modular surface grave units section; and
  - (g) Mausoleum section.

### **28. Monumental section**

- (1) A monumental section is a grave section in a cemetery set aside for the erection of memorial work at graves.
- (2) The officer in charge may in the course of time level all graves and plant grass thereon.
- (3) 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.
- (4) A person commits an offence if he or she contravenes subsection (3).

29. **Berm section**

- (1) A berm section is a grave section in a cemetery set aside by the City where memorial work is restricted to a headstone only, with lawn planted over the length of the grave.
- (2) Headstones may contain two receptacles for flowers.
- (3) Headstones must be erected on the concrete plinth supplied by the City; alternatively the person mentioned in section 37(1) must provide a suitable foundation to support the headstone, which shall be embedded horizontally at ground level in the position indicated by the officer in charge.
- (4) No kerb or frame demarcating the grave or a slab covering is permitted.
- (5) The officer in charge may in the course of time level all graves and plant grass thereon.
- (6) 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.
- (7) A person commits an offence if he or she contravenes subsections (3), (4) or (6).

30. **Landscape section**

- (1) A landscape section is a grave section in a cemetery set aside by the City where memorial work is restricted to a horizontally placed plaque or memorial slab only, with lawn planted over the length of the grave
- (2) No object other than a plaque or memorial slab may be placed on the grave.
- (3) No kerb or frame demarcating the grave or a slab covering is permitted.
- (4) The officer in charge may in the course of time level all graves and plant grass thereon.
- (5) 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.
- (6) A person commits an offence if he or she contravenes subsections (3), (4) or (5).

31. **Garden of Remembrance**

- (1) A garden of remembrance is a section in a cemetery set aside for the erection of memorial walls, niche walls, the establishment of ash graves and the scattering of cremated remains.
- (2) Flowers and wreaths may be placed only on the places provided therefore.
- (3) Any person who contravenes subsection (2) commits an offence.

32. **Crematorium section**

The City may set aside a section of a cemetery for the establishment of a crematorium.

33. **Heroes acre**

- (1) A heroes acre is a section in a grave section in a cemetery set aside by the City for the interment and commemoration of a hero.
- (2) No person may be interred in this section unless the status of a hero has been conferred by the Council in writing.
- (3) A person who interrs a corpse in contravention of subsection (2) commits an offence.

34. **Mausolea section**

- (1) A mausolea section may be established in a cemetery in which corpses are interred in mausolea.
- (2) The City may formulate policies in respect of mausolea, the interment of corpses in mausolea and the erection of memorial work in the mausolea section.

35. **Surface Grave Units section**

- (1) A surface grave units section may be established in a cemetery in which corpses are interred in surface grave units.
- (2) The City may formulate policies in respect of modular surface grave units, the interment of corpses in modular surface grave units and the erection of memorial work in this section.

36. **Denominational section**

The City may set aside designated areas 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 the norm. The allocation of such a section may not be to the detriment of the burial requirements of the general residents of the City of Cape Town.

**CHAPTER 8**  
**ERECTION AND MAINTENANCE OF MEMORIAL WORK AND CARE OF GRAVES**

**37. Consent of City**

- (1) No person may bring any memorial into a cemetery or erect, alter, paint, clean, renovate, decorate, remove or otherwise interfere with any memorial work or cut any inscription thereon in a cemetery without the written consent of the officer in charge and payment of the required fee.
- (2) Before erecting memorial work the following must be submitted to the officer in charge for approval at least 30 days prior to the proposed erection thereof:
  - (a) A plan which gives an indication of its measurements and its position;
  - (b) specification of the material of which the memorial work is to be constructed; and
  - (c) the wording of the epitaph.
- (3) The officer in charge may approve the application with or without such conditions as it deems necessary, and may refuse the application if it does not comply with requirements in respect of memorial work as determined by the City.
- (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 work to be carried out has been submitted.
- (5) The consent for the proposed work is valid only for a period of six (4) months from the date on which it is given, and in the event of the memorial work not being erected within the prescribed time a new application must be submitted.
- (6) A person who contravenes a provision of subsection (1) or (4) (a) commits an offence.

**38. Requirements for erection of memorial work**

- (1) A person erecting a memorial work must comply with the following:
  - (a) He or she must be in possession of a plan approved in terms of section 37;
  - (b) all work must be effected according to the conditions contemplated in section 37;
  - (c) proceedings must be of such a nature that no damage be caused

to any structure or offence given;

- (d) with the applicant's permission, the name of the maker can be displayed on a memorial work, but no address or any other particulars may be added thereto, and the space utilized for it may not be larger than 40 x 100 mm; and
  - (e) All unused material after the completion of the work must be removed, the adjoining areas are to be left neat and clean; and
  - (f) 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 City will undertake the remedial work at the cost of the person who erected the memorial work.
- (2) A person who does not comply with a provision in subsection (1) commits an offence.

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

- (1) No person may erect a memorial work on a grave before the position in which such memorial work is to be placed has been indicated in terms of the approved plan referred to in section 37.
- (2) Should the condition of subsection (1) not be complied with, the City has the right to alter the position of the memorial work and to recover the costs of the alteration from the person who erected the memorial work.
- (3) In the instance where a memorial work has originally been placed in a certain position with the express consent of the City, any alteration of the position in terms of the provisions of this section is executed at the expense of the City.

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

- (1) Any person engaged in any work, shall affect such work under the supervision of the officer in charge.
- (2) 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 City may cause a notice of compliance, as contemplated in section 61, to be served on such person.
- (3) The City may, after due notice, at any time change or alter the position of a memorial work in a cemetery and recover the cost thereof from the owner of the memorial work, however in an instance where a memorial work has originally been placed in a certain position with the express consent of the City, any alteration of the position in terms of the provisions of this section is executed at the expense of the City.

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

**41. Damaging of memorial work**

- (1) The City is not responsible for any damage which may at any time occur to a memorial work, and which is not due to the negligence of the City's employees.

**42. Vehicle and tools**

- (1) Every person engaged with work upon a grave or plot must ensure that the vehicles, tools or appliances be of such a kind as not to contravene this By-law and by no means block any road or roads.
- (2) No person may convey any stone, brick or memorial work or a portion thereof within a cemetery upon a vehicle or truck which may cause damage to the paths or grounds or structures of the cemetery.
- (3) Any person who contravenes the provisions of subsections (1) or (2) commits an offence.

**43. Complying with City's directions**

- (1) A person carrying on work within a cemetery must in all respects comply with the directions of the City.
- (2) A person who contravenes subsection (1) commits an offence.

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

- (1) No person may bring memorial work or material in connection therewith, or do any work, other than the dismantling of memorial work for interment purposes, within a cemetery except during the times determined by the Director.
- (2) No person may engage in work which may disturb or intrude upon a funeral, for the duration of the funeral.

**45. Unstable or saturated soil conditions**

- (1) No person may fix or place any memorial work while the soil is in an unsuitable condition.
- (2) A person who contravenes subsection (1) commits an offence.

**46. Production of written permission**

- (1) A person charged with a work or on his or her way to or from work within the cemetery must, upon demand from the City or its authorized

official, produce the written consent issued to him or her in terms of section 37.

- (2) The failure to produce the written consent referred to in subsection (1) constitutes an offence.

**47. Care of grave**

- (1) The maintenance of a grave is the responsibility of the person contemplated in section 5(2).
- (2) The City may undertake to keep any grave in order for any period, in terms of a policy which may be developed in respect of the care of graves.
- (3) The City may at its discretion undertake to keep any grave in order for any period at its own expense.

## **CHAPTER 9 EXHUMATION AND REDUCTION BURIAL**

**48. Application for exhumation**

- (1) An application for exhumation must be submitted to the Director, and must include:
  - (a) The completed application form;
  - (b) A copy of the death certificate;
  - (c) A letter or an affidavit from the deceased's next of kin consenting to the exhumation;
  - (d) Payment of the prescribed fee.

**49. Conditions of Exhumation**

- (1) No person may exhume or cause to be exhumed a body without the written consent of the:
  - (a) The Director;
  - (b) The Provincial Department of Health in accordance with the Exhumations Ordinance, 12 of 1980.
- (2) The written consent referred to in subsection 1 must be submitted to the Principal Environmental Health Practitioner at least five working days prior to the approved exhumation date.
- (3) An exhumation may only proceed when the conditions of the Environmental Health Practitioner have been complied with.
- (4) No exhumation or re-interment may proceed without the presence of a competent and experienced Environmental Health Practitioner employed by the City and a registered funeral undertaker.
- (5) The remains of a deceased person must be reburied or cremated within

48 hours, unless the Principal Environmental Health Practitioner determines that circumstances or conditions prevent reburial or cremation within the 48 hour period.

- (6) The remains of the deceased person must pending reburial or cremation be kept at a registered funeral undertakers premises.
- (7) Exhumations shall be carried out in accordance with the City's policy on exhumation and re-interment of human remains.
- (8) A Commonwealth war grave may only be exhumed in accordance with the provisions of section 3 of the Commonwealth War Graves Act, 1992.
- (9) The person carrying out the exhumation must provide a suitable receptacle for each body or remains.

**50. Emergency Exhumations**

- (1) No body may be exhumed less than eighteen months after burial, other than in compliance with a Court Order.
- (2) An emergency exhumation shall comply with the provisions of section 48 and 49.
- (3) A member of the South African Police Services must be present during emergency exhumations.

**51. Wrongful burial**

The City may If a body has been buried in contravention of this By-law, subject to the provisions of section 48, cause the body to be exhumed and reburied in another grave, in which event the relatives of the deceased must be notified of the intended exhumation and reburial and allowed to attend.

**52. Reduction Burial**

- (1) The City may 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, at a greater depth, subject to the conditions that:
  - (a) Any holders of private rights in that grave, determined in terms of subsections 13(3) and (4) have given their consent;
  - (b) In respect of any grave where no private rights have been acquired, where the next of kin, or other closest surviving relative of the corpse has given consent.

**CHAPTER 10**  
**USE AND CLOSURE OF DISUSED CEMETERIES**

**53. Use and closure of disused cemeteries**

- (1) Notwithstanding any provision of this By-law, and subject to the provisions of subsection (6), the City 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 purpose as will not desecrate the ground and any human remains or any memorials in such cemetery.
- (2) Notwithstanding any provision of this By-law, and subject to the provisions of subsection (6), the City may close 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, or if good cause for such closure exists.
- (3) Notwithstanding any provision of this By-law, and subject to the provisions of subsection (6), the City may use as a cemetery any cemetery or any portion thereof, which has been used for another purpose in terms of subsection (1) above, or reopen any cemetery or portion thereof, which has been closed in terms of subsection (2) above.
- (4) The City may, subject to the provisions of subsection (6), 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.
- (5) All rights possessed or enjoyed by any person in respect of a cemetery contemplated in subsections (1) and (2) shall thereupon cease.
- (6) Before acting in terms of subsections (1), (2), (3) and (4) the City must give notice of its intention to do so in terms of its public participation policy.

**CHAPTER 11**  
**CREMATIONS**

(The sections below are supplementary and additional to the regulations promulgated under the provisions of section 5 of the Cremation Ordinance, 6 of 1926, published under Provincial Notice 289 dated 15 October 1926).

**54. Applications for Cremation**

- (1) Applications for cremation must be made upon such terms, at such

times and places and upon payment of such fees as determined by the City from time to time.

- (2) A person may only cremate or cause to be cremated any body within any crematorium after –
  - (a) complying with applicable legislation;
  - (b) obtaining the approval of the City; and
  - (c) complying with all the conditions as determined by the City from time to time.

**55. Cremations**

- (1) Where applications have been made for cremation, the applicant or his or her representative must provide bearers for the purpose of carrying the coffin into the crematorium.
- (2) Where a member of the public desires to be present in a crematory, a request to that effect must be made to the City, which will consider the request as it deems fit.
- (3) Any body 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.

**56. Coffins**

- (1) When cremated a body must be contained in a coffin.
- (2) A coffin must conform to the specifications as determined by the City from time to time.
- (3) No body may be removed from any coffin for the purpose of incineration and a coffin may not be opened in the crematorium except when directed by the officer in charge.

**57. General Requirements for memorials and memorial work**

- (1) The City may provide –
  - (a) buildings, niches or other facilities for the deposit and preservation of ashes for definite periods or in perpetuity upon such terms and conditions as may be determined by the City from time to time;
  - (b) facilities for memorial tablets of approved material, upon such terms and conditions as may be determined by the City from time to time; and
  - (c) gardens for the scattering and/or burial of ashes, which gardens may be known as “Gardens of Remembrance”.

- (2) All inscriptions on niches, memorial tablets or on books of remembrance must comply with general standards of decency and propriety and must not be of such a nature so as to offend the feelings of the public.
- (3) A person may only –
  - (a) open a niche containing ashes, or
  - (b) remove an urn or casket containing ashes from a niche with the permission of the City, which will not be unreasonably withheld.
- (4) If ashes are buried in a grave in a container, such container must be constructed of perishable material.
- (5) Only urns or caskets containing ashes may be deposited in a niche.
- (6) The City or its employees will not be liable to members of the public for any damage to or theft from niches, urns, memorials or any other embellishments thereon within a crematorium under its control or its grounds.

**58. Disposal of Ashes**

- (1) Ashes must be disposed of as requested by the applicant for cremation or his or her representative.
- (2) Directions as to the disposal of ashes must be given by the applicant or his or her representative at the time of application for cremation.
- (3) Notwithstanding the above, the officer in charge has the right to dispose of the ashes in accordance with applicable legislation.

**CHAPTER 12  
MISCELLANEOUS**

**59. Authentication and service of order, notice or other document**

- (1) An order, notice or other document in terms of this By-law requiring authentication must be signed by, or on the instruction of a duly authorised employee of the City.
- (2) Any notice or other document that is served on a person in terms of this By-law, is regarded as having been served –
  - (a) when it has been delivered to that person personally;
  - (b) when it has been left at that person's place of residence or business in the Republic with a person apparently over the age of sixteen years;
  - (c) when it has been posted by registered or certified mail to that person's last known residential or business address in the Republic and an acknowledgement of the posting thereof from

the postal service is obtained;

- (d) if that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided by paragraphs (a), or (b) or (c);
  - (e) if that person's address and agent or representative in the Republic is unknown, when it has been affixed in a conspicuous place on the property or premises, if any, to which it relates; or
  - (f) in the event of a body corporate, when it has been delivered at the registered office or the business premises of such body corporate.
- (3) Service of a copy shall be deemed to be service of the original.
  - (4) Any legal process is effectively and sufficiently served on the City when it is delivered to the City Manager or a duly authorised person in attendance at the City Manager's office.

60. **Complaint**

- (7) A person wishing to lodge a complaint with the City in terms of the provision of this By-law, must do so in writing at the City Manager's office.

61. **Notice of compliance and representations**

- (1) A notice of compliance served in terms of section 40 must state –
  - (a) the name and residential and postal address, if either or both of these be known, of the person;
  - (b) the nature of the state of disrepair;
  - (c) in sufficient detail to enable compliance with the notice, the measures required to remedy the memorial work;
  - (d) that the person must within a specified time period take the measures to comply with the notice, to diligently continue with the measures, and to complete the measures before a specific date;
  - (e) that failure to comply with the requirements of the notice within the period contemplated in paragraph (d) is an offence;
  - (f) that written representations, as contemplated in subsection (3) may, within the time period stipulated under paragraph (d) above, be made to the City at a specified place.
- (2) The City, when considering any measure or time period envisaged in subsections (1)(d) and (e), must have regard to –
  - (a) the principles and objectives of this By-law;
  - (b) the state of disrepair;
  - (c) any measures proposed by the person on whom measures are to be imposed; and

- (d) any other relevant factors.
- (3) A person may within the time period contemplated in paragraph (1) (f) make representations, in the form of a sworn statement or affirmation to the City 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 City condones the late lodging of the representations.
- (5) The City must consider the representations and any response thereto by an authorised official or any other person, if there be such a response.
- (6) The City may, on its own volition, conduct any further investigations to verify the facts if 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 the City must also consider the further response.
- (7) The City must, after consideration of the representations and responses, if there be such a response, make an order in writing and serve a copy of it on the person.
- (8) The order must –
  - (a) set out the findings of the City;
  - (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 City.
- (9) If the notice of compliance is confirmed, in whole or in part, or is altered but not set aside, the City will inform the person that he or she must discharge the obligations set out in the notice within the time specified therein; or
- (10) Where there has been no compliance with the requirements of the notice within the time specified therein, the City may take such steps as it deems necessary to repair the monumental work and the cost thereof must be paid to the City.

## 62. **Costs**

- (1) Should a person fail to take the measures required of him or her by notice, the City may recover from such person all costs incurred as a result of it acting in terms of paragraph 61(10).

## 63. **Appeal**

- (1) A person whose rights are affected by a decision delegated by the City may appeal against that decision by giving written notice of the appeal

and the reasons therefore in terms of section 62 of the Local Government: Municipal Systems Act 32 of 2000 to the City Manager within 21 days of the date of the notification of the decision.

**64. Charges**

- (1) The prescribed fees to be paid to the City in terms of this By-law, are those as contained in the City's Tariff of Fees as promulgated from time to time.

**65. Offences and Penalties**

- (1) A person who contravenes the provisions of section **[FINALISE THIS ONCE WE FINALISE THE BY-LAW]** commits an offence.
- (2) A person who has committed an offence in terms of this By-law will be, on conviction, liable to a fine not exceeding R50 000.00 (Fifty Thousand Rand) or in default of payment, to imprisonment for a period not exceeding six (6) months, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment.

**66. Limitation of liability**

- (1) The City is not liable for any damage or loss caused by –
  - (a) the exercise of any power or the performance of any duty in good faith under this By-law;
  - (b) the failure to exercise any power, or perform any function or duty under this By-law; or
  - (c) the exercise by a person of a right which he or she has obtained from the City.

**67. Exemptions**

- (1) Any person may by means of a written application, in which the reasons are given in full, apply to the City for exemption from any provision of this By-law.
- (2) The City 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 City under subsection (2), however, if an activity is commenced before such undertaking has been submitted to the City, the exemption lapses.

- (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.

**68. Liaison forums in community**

- (1) The City may establish one or more liaison forums in a community for the purposes of –
  - (a) creating conditions for a local community to participate in the affairs of the City insofar as they relate to the matters regulated in this By-law;
  - (b) encouraging a local community to participate in the affairs of the City relating to the matters regulated in this By-law; and
  - (c) promoting the achievement of a healthy environment, insofar as they may relate to matters regulated in this By-law.
- (1) A liaison forum may consist of –
  - (a) a member or members of an interest group, or an affected person;
  - (b) a member or members of a community in whose immediate area a cemetery exists;
  - (c) a designated official or officials of the City; and
  - (d) the councillor responsible for cemeteries.
- (2) The City may, when considering an application for consent, permit or exemption certificate in terms of this By-law request the input of a liaison forum.
- (3) A liaison forum or any person or persons contemplated in subsection (2) may, on own initiative; submit an input to the City for consideration.

**69. Revocation of By-laws**

- (2) The provisions of any By-laws previously promulgated by the City or by any of the disestablished Municipalities now incorporated in the City are hereby repealed as far as they relate to matters provided for herein.

**70. Short title and commencement**

- (3) This By-law shall be known as the Cemeteries and Funeral Undertakers By-law and commences on \_\_\_\_\_.

