
CONTENTS • INHOUD

<i>No.</i>		<i>Page No.</i>	<i>Gazette No.</i>
LOCAL AUTHORITY NOTICES			
88	Local Government: Municipal Systems Act (32/2000): Amathole District Municipality: By-law relating to Solid Waste Disposal	3	1545
89	do.: do.: By-law relating to Cemeteries and Crematoria.....	15	1545

LOCAL AUTHORITY NOTICES

LOCAL AUTHORITY NOTICE 88

LOCAL AUTHORITY NOTICE

AMATHOLE DISTRICT MUNICIPALITY

BY-LAW RELATING TO SOLID WASTE DISPOSAL

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

Purpose of By-law

The purpose of this by-law is to promote a safe and healthy environment for the benefit of the public residing within the municipal boundaries, and to provide for practices and procedures to regulate solid waste disposal.

CHAPTER 1

DEFINITIONS

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

"attendant" means an employee, agent or contractor of the municipality duly authorised to control or manage a disposal site;

"bin liner" means a plastic bag, as prescribed by the municipality, for placement inside a container;

"builder's waste" means any waste resulting from or generated by the construction, renovation or demolition of a building or other structure or works;

"bulky waste" means any waste, other than industrial waste, which emanates from any premises and which, by virtue of its mass, shape, size or quantity, cannot be conveniently accumulated in or removed from a container with a bin liner;

"charge" means the charge prescribed by the municipality by resolution of its municipal council;

"container" means a standard type of refuse container as approved by the municipality;

"day" means a calendar day, including a Saturday, Sunday and any public holiday;

"disposal site" means a site used for the accumulation of waste, with the purpose of disposal or treatment or such waste;

"domestic waste" means any waste usually emanating from, or incidental to, the normal occupation of a dwelling, flat, hotel, boarding house, restaurant, guest house, hospital, court, school, government office, café, shop, old age home or business premises, but shall not include stones, soil, gravel, bricks, waste liquids, sewerage, or industrial, builder's or trade waste;

"garden waste" means any waste which is generated as a result of normal gardening activities, such as grass cuttings, leaves, trees, plants, flowers, weeds and other similar light matter;

"industrial waste" means any waste generated as a result of manufacturing, maintenance, production and dismantling activities;

"Minister" means the Minister of Environmental Affairs and Tourism;

"municipality" means the Amathole District Municipality, established in terms of Section 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), and includes any political structure, political office bearer, councillor, duly authorised agent thereof or any employee thereof acting in connection with this by-law by virtue of a power vested in the municipality and delegated to such political structure, political office bearer, councillor, agent or employee;

"municipal service" means, unless otherwise stated, the provision or supply of solid waste disposal and waste management services;

"nuisance" means, without limiting the generality of the term, an act, omission, condition or state of affairs that –

- [a] impedes, offends, endangers or inconveniences the public at large; or
- [b] causes material inconvenience in the ordinary and comfortable use or enjoyment of private property;

"occupier" means, for the purposes hereof, the person who controls and resides in, or who controls and otherwise uses, immovable property, and includes joint occupiers;

"offensive matter" means such matter, including fluids, that may be classified as such by the municipality from time to time;

"owner" means, and includes -

- [a] the person or persons in whom the registered title in immovable property is vested;

- [b] the person administering an estate as curator, executor, proxy, trustee or administrator of a person in whom the legal title in immovable property is vested and who is insolvent, deceased or of unsound mind;
- [c] the agent or persons receiving the rental of immovable property in cases where the registered owner is away or absent;
- [d] the beneficiary of a usufruct over immovable property; or
- [e] the fiduciaries of municipal property;

"trade waste" means any trade material or trade waste, as determined by the municipality and agreed to by the owner or occupier;

"transfer station" means any site set aside by the municipality, for the interim storage of waste, pending its removal to and disposal at a disposal site.

"waste" means any matter, whether gaseous, liquid or solid or any combination thereof, which is from time to time designated by the Minister by notice in the Gazette as an undesirable or superfluous by-product, emission, residue or remainder of any process or activity, as contemplated in terms of Section 1 of the Environment Conservation Act, 1989 (Act No. 73 of 1989).

CHAPTER 2

WASTE REMOVAL AND DISPOSAL

2. Waste removal

- [a] The municipality shall provide municipal services as defined, and subject to the provisions of national legislation to this effect.
- [b] The charges payable to the municipality for the provision of such municipal services, and the amount to be deposited with the municipality by any person making use of the aforesaid municipal services, shall be determined by the municipality from time to time.

3. Use of municipal services compulsory in respect of domestic waste

- [1] Every owner or occupier shall make use of municipal services in respect of all domestic waste which emanates from immovable or municipal property.
- [2] In the event that no municipal services are provided or supplied to the immovable or municipal property in question, the owner or occupier shall take such steps as may be necessary to ensure that such domestic waste is -

- [a] removed regularly, so as not to constitute a nuisance for neighbouring owners or occupiers; and
- [b] disposed of at a disposal site.

4. **Municipality to remove domestic waste**

- [1] Subject to subsection [2], no person other than the municipality shall remove domestic waste from any immovable or municipal property, or dispose of it in any manner whatsoever.
- [2] A person may remove domestic waste from such immovable or municipal property, or dispose of it, only in the event that -
 - [a] no municipal services are provided or supplied to the immovable or municipal property in question, as contemplated in terms of the preceding section; or
 - [b] such person has obtained written authorisation from the municipality to undertake such removal or disposal.

5. **Accumulation and removal of domestic waste**

- [1] Subject to the provisions of subsection [6], the municipality may require every owner or occupier of a property to provide on such property a container with a capacity of not less than 85 litres, constructed of a material approved by the municipality, and with a close-fitting lid and handles, for the accumulation of domestic waste.
- [2] If the municipality is of the opinion that more than one container for the accumulation of domestic waste is essential on a particular property, then it may, according to the quantity of domestic waste normally accumulated on such property, require the occupier thereof to provide as many containers on such property, as it may determine.
- [3] If a container used by an owner or occupier does not comply with the requirements of the municipality, then the municipality may instruct such owner or occupier to obtain and use some other suitable container complying with its requirements.
- [4] The municipality may, where it considers it necessary or desirable, supply containers to particular classes of owners or occupiers, or to particular classes of properties, or in particular areas, in which event the cost of such containers may be recovered from the owners or occupiers of the properties concerned.

- [5] All containers shall be equipped with bin liners as may be presented by the municipality, unless the municipality determines otherwise.
- [6] The municipality may, generally or in particular, issue instructions to owners and occupiers with regard to the manner in which, or the arrangements according to which, domestic waste or refuse bags shall be placed in containers, be removed therefrom, be tied, and thereafter be placed or deposited for removal, and any disregard of such instructions shall constitute a contravention of this by-law.
- [7] No material, including any liquid, which by reason of its mass or other property is likely to render such bin liners or containers difficult or dangerous for the municipality's employees to handle or carry shall be placed in such bin liners or containers.
- [8] The containers or bin liners or both shall be removed by the municipality at such intervals as the municipality may deem necessary, but only if such containers or bin liners or both have been placed or deposited at the prescribed places, as determined by the municipality.
- [9] In any case where the occupier of a property is not also the owner, the municipality may hold the owner him- or herself, instead of the occupier, liable for compliance with the provisions of this by-law.
- [10] The municipality may, in specific cases, impose different requirements, other than the use of an 85-litre container, for the removal and disposal of domestic waste, and the owner or occupier of immovable property, as the case may be, shall be obliged to comply with the aforesaid directions of the municipality.

6. Containers for accumulation of domestic waste

- [a] Subject to subsection [b], the owner or occupier of immovable or municipal property shall ensure that all domestic waste generated on such property shall be accumulated only in a container contemplated in terms of the preceding section.
- [b] In the event that no municipal services are provided or supplied to the immovable or municipal property in question, the owner or occupier may accumulate domestic waste in a container other than one contemplated in terms of the preceding section, provided that such accumulation does not constitute a nuisance for neighbouring owners or occupiers.

7. Garden waste

- [1] Garden waste shall be removed from the property where it accumulates, according to any arrangements which the owner or occupier of such property has made with the municipality or private contractors.
- [2] If any accumulation of garden waste is not removed within a reasonable time, and if such accumulation creates a nuisance or danger to public health, or a fire hazard to property, then the municipality shall instruct such owner or occupier in writing to effect the removal of such accumulation within a specified period, no later than 14 days from the date of such instruction.
- [3] Where necessary, and subject to the availability of its facilities and resources, the municipality may, in its discretion, and upon application by the owner or occupier of property, remove an accumulation of garden waste from such property, at the cost of the owner or occupier, and in accordance with such terms and conditions as the municipality may determine.
- [4] No garden waste may be dumped, kept or stored in or on any pavement or vacant ground.

8. Removal of bulky or industrial waste

- [1] The owner or occupier of premises on which bulky or industrial waste is generated shall ensure that such waste is disposed of in terms of this by-law within a reasonable period, but no later than 14 days after the generation thereof.
- [2] Bulky or industrial waste shall, once it has been removed from the premises on which it was generated, be deposited at a disposal site designated for such waste.
- [3] The removal and disposal of bulky or industrial waste may be undertaken by the municipality, provided that -
 - [a] the owner or occupier of the premises in question applies to the municipality, pays such costs as may be prescribed, and complies with any terms and conditions determined by the municipality; and
 - [b] no disposal site within reasonable proximity to the premises has been designated for such waste.
- [4] No obligation is imposed on the municipality in terms of this by-law to remove bulky or industrial waste.

9. Builder's waste

- [a] Builder's waste which may have accumulated in the course of the construction, alteration, renovation or demolition of any structure or works shall be removed from the property concerned, according to suitable arrangements to be made by the owner or occupier of such property with the municipality.
- [b] If there is any undue delay in the removal of such waste after the completion of the works involved, then the municipality may direct, by written notice to such owner or occupier, that the builder's waste be removed to an approved disposal site, within a specified time, no later than 14 days from the date of such notice.

10. Trade waste

The municipality may enter into an agreement with the owner or occupier of any premises, for the removal of trade waste by the municipality, at a charge fixed by the municipality.

11. Abandoned objects

Any object, other than a vehicle deemed to have been left or abandoned anywhere in terms of the National Road Traffic Act, 1996 [Act No. 93 of 1996], which may be reasonably regarded by the municipality as having been abandoned, may be removed and disposed of by the municipality, in any manner as it may deem fit.

12. Recycling

- [1] The municipality shall determine requirements for the recycling of waste.
- [2] No waste may be stored upon any premises, for purposes of recycling, where such storage constitutes a nuisance to the owners or occupiers of neighbouring properties.
- [3] Notwithstanding the provisions of subsection [2], any person involved in any way in recycling shall comply with all national legislation to this effect.

CHAPTER 3**DISPOSAL SITES AND TRANSFER STATIONS****13. Disposal sites and transfer stations for waste**

- [1] The municipality shall establish, provide and operate disposal sites and transfer stations, where waste shall be disposed of, deposited or dumped.
- [2] Any person disposing of, depositing, or dumping, waste in any place other than one established and provided by the municipality shall be guilty of an offence, with the exception that waste may be disposed of, deposited or dumped at a disposal site established, provided or operated by any person who is the holder of a current permit duly issued in terms of Section 20 of the Environment Conservation Act, 1989 (Act No. 73 of 1989).
- [3] The municipality may, from time to time, determine tariffs for the disposal of, depositing of, or dumping of, waste at a disposal site or transfer station.

14. Ownership of waste

All waste removed by the municipality, and all waste on disposal sites or transfer stations controlled by the municipality, shall be the property of the municipality, and no person who is not duly authorised by the municipality to do so shall remove, or in any manner interfere with, such waste.

15. Liability

- [1] Where any object has been removed and disposed of by the municipality in terms of section 17, the owner or person responsible for such object shall be liable to pay the municipality the charge fixed by it for its removal, disposal or custody.
- [2] For the purposes of subsection [1], the person responsible shall be –
 - [a] the owner of the object, including any person who is entitled to be in possession of the object by virtue of a hire purchase agreement or an agreement of lease, at the time when it was abandoned or deposited in the place from which it was so removed, unless he or she can prove that he did not know that it had been deposited in such place; or
 - [b] any person who deposits the object in the said place; or

- [c] any person who knowingly permits or permitted the object to be deposited in the said place.

16. Control and management of disposal sites and transfer stations

- [a] The municipality shall control and manage any disposal site in respect of which it is a current permit holder in terms of Section 20 of the Environment Conservation Act, 1989 (Act No. 73 of 1989).
- [b] Notwithstanding subsection [a], the municipality may enter into a contract with a person to control and manage a disposal site or transfer station on behalf of the municipality, provided that such contract does not contravene the provisions of the permit referred to in the aforesaid subsection [a] or any applicable legislation.

17. Access to disposal sites and transfer stations

- [1] No person shall enter a disposal site or transfer station, or shall be or remain on such premises, except on such days and at such times as shall be fixed by the municipality from time to time.
- [2] A notice, indicating the days and hours during which a disposal site or transfer station will normally be open for the disposal of, depositing of, or dumping of, waste, shall be displayed by the municipality in a clearly visible place at or near the entrance to such premises.
- [3] The municipality may limit access to a disposal site or transfer station, by permitting access to only those persons who have paid the prescribed fee, and who are in possession of written permission issued by the municipality, authorising them to dispose of, deposit, or dump, waste at a disposal site or transfer station, or authorising them to recycle any materials or objects at or on such site.
- [4] Notwithstanding anything to the contrary contained in this by-law, any employee of the municipality, or anybody acting on behalf of the municipality and duly authorised thereto, may enter a waste disposal site or transfer station at any time in the exercise of his or her duties.
- [5] Any person making use of or entering a disposal site or transfer station shall do so entirely at his or her own risk, and the municipality will not be responsible for the safety of such person, or for any damages or losses sustained by such person, as a result of his or her presence at or on such premises.
- [6] Anybody who enters a disposal site or transfer station, or who is found thereon, in contravention of the provisions of this by-law shall be guilty of an offence.

18. Offloading of waste

- [a] Any person who wishes to dispose of, deposit, or dump, waste at a disposal site or transfer station shall offload such waste at such place within the borders of the said premises as directed by an attendant.
- [b] Any person who disregards the reasonable instructions of an attendant shall be guilty of an offence.

19. Prohibition on disposal of, depositing of, or dumping of, offensive matter

The municipality reserves the right to prohibit the disposal of, depositing of, or dumping of, any offensive matter at a disposal site or transfer station.

CHAPTER 4**GENERAL PROVISIONS****20. Offences and penalties**

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

- [a] a fine of R60 000, or imprisonment for a period of 12 (twelve) months, or such imprisonment without the option of a fine, or both such fine and such imprisonment;
- [b] in the case of a continuing offence, an additional fine of R600, or an additional period of imprisonment of one day, or such additional imprisonment without the option of a fine, or both such additional fine and imprisonment, for each day on which such offence is continued; and
- [c] a further amount equal to any costs and expenses found by a court to have been incurred by the municipality as result of such contravention or failure.

21. Regulations

- [1] The municipality may make regulations regarding –
 - [a] the conditions in terms of which the municipality shall provide a waste removal and disposal service, as contemplated in terms of sections 2, 3, 4 and 5, including –

- (i) the construction, capacity and number of containers for domestic refuse;
 - (ii) the provision of such containers to particular classes of owners, occupiers or properties;
 - (iii) the construction and capacity of bin liners; and
 - (iv) arrangements with regard to the use of containers, and disposal of domestic waste for removal by the municipality;
- [b] arrangements for the removal and disposal of –
- (i) garden waste, as contemplated in terms of section 7[3];
 - (ii) builder's waste, as contemplated in terms of section 9[a]; and
 - (iii) trade waste, as contemplated in terms of section 10;
- [c] requirements for the recycling of waste, as contemplated in terms of section 12;
- [d] the compilation of a tariff of costs and charges, as may be applied in terms of sections 2[b], 7[3], 8[3][a], 9[a], 10, 13[3], 15[1] and 17[3];
- [e] the establishment, provision and operation of disposal sites and transfer stations for the disposal of different categories of waste mentioned in this by-law;
- [f] the removal and disposal of abandoned objects, as contemplated in terms of section 11;
- [g] the terms and conditions of any contract concluded by the municipality with any person to control and manage a disposal site or transfer station, as contemplated in terms of section 16[b];
- [h] access to disposal sites or transfer stations, as contemplated in terms of section 17, including –
- (i) the days and times during which access shall be permissible;
 - (ii) the construction and contents of notices required to indicate the days and times of access;
 - (iii) the terms and conditions of written permission issued by

- the municipality so as to limit access in terms of section 17[3];
- [i] (i) the prescription of penalties for the offences contemplated in terms of section 20; and
 - (ii) the amendment of such penalties from time to time;
 - [j] any matter which may be prescribed in terms of this by-law, and any matter which may facilitate the application of this by-law.
- [2] [a] The municipality shall, not less than one month before promulgating a regulation in terms of subsection 1, cause a draft of the regulation to be communicated to the local community and to be made public in terms of Sections 21 and 21A of the Local Government: Municipal Systems Act, 2000 [Act No. 32 of 2000], together with a notice declaring the intention of the municipality to issue such a regulation and inviting comments or representations.
- [b] If the municipality decides to alter the draft regulation as a result of comments or representations received pursuant to such invitation, then it shall not be necessary to communicate and make public the alteration before the amended draft is promulgated as a regulation.

22. **Repeal of by-laws**

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

23. **Short title**

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

LOCAL AUTHORITY NOTICE 89**AMATHOLE DISTRICT MUNICIPALITY****BY-LAW RELATING TO CEMETERIES AND CREMATORIA**

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

Purpose of By-law

The purpose of this by-law is to promote the establishment, conduct and control of cemeteries and crematoria.

CHAPTER 1**DEFINITIONS**

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

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

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

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

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

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

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

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

'cemetery' means a piece of land duly set aside and demarcated, within the municipal boundaries of the municipality and in terms of the municipality's town planning scheme, for human burials, and "graveyard" shall have a corresponding meaning;

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

'crematorium' means any building located within the municipal boundaries of the municipality and equipped with appliances, facilities or structures for the purpose of burning human remains, and shall include anything incidental or ancillary thereto;

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

'indigent deceased' means a destitute person who has died in indigent circumstances, or a person in respect of whom no next of kin, welfare organisation or non-governmental organisation can be located to bear the burial or cremation costs of such person, and "pauper" shall have a corresponding meaning;

'municipality' means the Amathole District Municipality, established in terms of Section 12 of the Local Government: Municipal Structures Act, 1998 [Act No. 117 of 1998], and includes any political structure, political office bearer, councillor, duly authorised agent thereof or any employee thereof acting in connection with this by-law by virtue of a power vested in the municipality and delegated to such political structure, political office bearer, councillor, agent or employee;

'next of kin' means –

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

'nuisance' means, without limiting the generality of the term, an act, omission, condition or state of affairs that –

- (a) impedes, offends, endangers or inconveniences the public at large; or
- (b) causes material inconvenience in the ordinary and comfortable use or enjoyment of private property;

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

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

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

CHAPTER 2

CEMETERIES

2 Establishment of cemeteries

- [1] The municipality may establish cemeteries within its municipal boundaries.
- [2] No person shall –
 - (a) establish a cemetery without the prior written approval of an authorised official; or
 - (b) knowingly inter, cause to be interred or permit the interment of any body in a cemetery which has not been established with such prior approval.

3 Existing land set aside and demarcated for human burials

Where any land has been set aside and demarcated for human burials by any person other than the municipality, prior to the commencement of this by-law –

- (a) the owner or occupier of such land shall –
 - (i) ensure that the use or condition of such land does not constitute a nuisance to neighbouring owners or occupiers; and

- (ii) not inter, cause to be interred or permit the interment of any body at such land without the prior written permission of the municipality;
- (b) the municipality shall take such steps as may be necessary to ensure that the use or condition of such land does not constitute a health risk or nuisance to the community residing within the immediate vicinity.

4 Taking over of conduct and control of cemeteries by the municipality

- [1] The municipality may take over the conduct and control of any cemetery situated within its municipal boundaries.
- [2] Where the conduct and control of a cemetery were the responsibility of a burial authority, the municipality and the burial authority may agree upon the terms and conditions of such taking over, provided that -
 - (a) the ownership of all movable and immovable property in respect of the cemetery shall vest in the municipality, subject to -
 - (i) the existence of any trust or other condition relating to the property;
 - (ii) payment by the municipality to the burial authority of fair compensation, determined with reference to market value, where such payment would be equitable or otherwise appropriate in the circumstances; and
 - (iii) compliance with the provisions of the Deeds Registries Act, 1937 [Act No. 47 of 1937], as amended from time to time;
 - (b) all revenue and other funds payable or recoverable in respect of the cemetery shall be payable to and recoverable by the municipality;
 - (c) all other privileges and rights and all liabilities and obligations in respect of the cemetery shall devolve upon the municipality; and
 - (d) the provisions of the conditions set out in terms of subsection (a) shall apply *mutatis mutandis* to subsections (b) and (c).
- (3) Notwithstanding the existence and continued functioning of a burial authority, and where the municipality decides not to take over the conduct and control of any cemetery, responsibility for the proper

and effective conduct and control of such cemetery shall remain with the municipality.

5 Setting aside of portion of a cemetery for burial of deceased of a religious group

- [1] The municipality may set aside any portion of a cemetery for the burial of the deceased of any religious group, body or community, provided that -
- (a) the foregoing shall be interpreted so as to apply to a person of any major faith, commonly recognised as such; and
 - (b) such setting aside shall not entitle any person to be buried in any particular place in a cemetery.
- [2] Nothing contained in this section shall be construed so as to detract from any person's constitutional right to freedom of conscience, religion, thought, belief and opinion.

6 Disposal of right to burial

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

7 Written permission for burial

- [1] No person shall bury a body in a cemetery -
- (a) except in terms of the authority of a written permit issued by the caretaker or authorised official; or
 - (b) otherwise than in accordance with the conditions specified in such permit.
- [2] An application for the permit referred to in subsection [1] shall be accompanied by a burial order, and shall contain such information as may be required by the caretaker or an authorised official.

8 Burial

- [1] Except with the permission of the caretaker or an authorised official, who shall record the circumstances in terms of which such permission is granted, no person shall bury a body in a cemetery during the hours between sunset and sunrise.
- [2] No person shall -
- (a) bury a body unless the grave is of sufficient depth so that the top of the body, or the top of a coffin, as the case may be, is not less than 1 050 mm below the surface of the ground when the grave has been filled up;
 - (b) bury more than one body in a grave, unless the grave has been dug to a sufficient depth so that subsection (a) may be complied with and so that the first body or coffin may be covered with 100 mm of reinforced concrete or 300 mm of soil when the second body is buried; or
 - (c) remove a body from a grave in order to enlarge such grave, unless the requirements of Section 19[1] and [3] have been met.

9 Measurements of burial plots and graves

- [1] The standard measurements for burial plots shall be determined by the municipality.
- [2] The standard measurements for graves shall be as follows -
- (a) in respect of adults -
 - (i) length: 2 200 mm;
 - (ii) width: 1 200 mm; and
 - (iii) depth: 1 800 mm;
 - (b) in respect of children -
 - (i) length: 1 350 mm;
 - (ii) width: 600 mm; and
 - (iii) depth: 1 500mm.
- [3] Where deemed necessary or appropriate by the municipality, a grave may be prepared in such a manner so as to permit the burial of a body in a vertical position, provided that -
- (a) an express request has been made to this effect by the next of kin;
 - (b) the consent of the next of kin has been obtained in circumstances where subsection (a) does not apply; and

- (c) standard measurements have been determined by the municipality to give effect to such manner of burial.

10 Appearance of burial plots and graves

- [1] No person shall erect or place any kerb, tombstone, monument, railing, fence or similar ornamentation upon a burial plot or grave -
- (a) except under the authority set out in a written permit issued by the caretaker or an authorised official;
 - (b) otherwise than in accordance with the conditions set out in such permit; or
 - (c) in such a manner so as to exceed the boundaries of a burial plot.
- [2] The size (outer dimensions) of any kerb, tombstone, monument, railing, fence or similar ornamentation on burial plots or graves shall not exceed the following measurements -
- (a) in respect of adults -
 - [i] single burial plot: 2 500 mm x 1 050 mm;
 - [ii] double burial plot: the size of two single burial plots;
 - [iii] family burial plot: the appropriate multiple of a single burial plot;
 - [iv] width of kerb: 150 mm; and
 - [v] tombstones shall not be higher than 1 600 mm above the surface of the ground;
 - (b) in respect of children -
 - [i] single burial plot: 1 500 mm x 1 000 mm;
 - [ii] width of kerb: 150 mm; and
 - [iii] tombstones shall not be higher than 1 200 mm above the surface of the ground.
- [3] An application for a permit referred to in subsection [1] shall contain such details as may be required by the municipality in respect of the ornamentation concerned and the inscription to be placed thereon, and the municipality may refuse to issue such permit if, in its reasonable opinion, such ornamentation is likely to be of improper



workmanship or quality, or is likely in any way to disfigure a cemetery, or will offend the public.

[4] No person shall -

- (a) use any portion of a cemetery for the cutting, dressing and manufacturing of kerbs, tombstones, monuments, railings, fencing or similar ornamentation, except with the permission of the municipality or otherwise than in accordance with the conditions determined by the municipality;
- (b) carry out any work in connection with any kerb, tombstone, monument, railings or fence or similar ornamentation on or around a grave, or bring any materials into a cemetery for the purposes of such work, except during the hours between sunrise and sunset on Mondays to Fridays, but excluding public holidays; or
- (c) at any time leave any building sand, stones, builders' rubble, soil, rubbish or other debris in the cemetery.

11 Maintenance of graves and ornamentation

- [1] Whenever a person who erected or placed ornamentation in a cemetery allows it to fall into such state of disrepair as in the reasonable opinion of the municipality constitutes a danger or a disfigurement in the cemetery, the municipality may by written notice require him or her to effect such repairs as may be specified in such notice, and if his or her address is unknown, then such notice may be published in a newspaper circulating within the area of the municipality.
- [2] In the event of the required repairs not being effected within 3 (three) months from the delivery or publication of such notice, the municipality may itself effect the repairs or remove the ornamentation, and may recover the expense of such repairs or removal from such person.
- [3] The holder of a right to burial in a specified burial plot shall keep such burial plot and the ornamentation thereon in good order and repair.
- [4] The municipality may undertake the upkeep of burial plots or graves at a prescribed tariff.
- [5] No person shall undertake the upkeep of burial plots or graves in a cemetery, except with the written consent of the municipality.

12 Planting of trees, shrubs or vegetation

- [1] No person shall -



- (a) plant a tree, shrub or vegetation on a burial plot or grave without the permission of the caretaker or authorised official; or
 - (b) when cleaning a burial plot or grave, deposit the material cleared from such location in the cemetery at a place other than the facilities provided for such purpose.
- [2] The caretaker or an authorised official may prune, cut down, dig up or remove any tree, shrub or vegetation in a cemetery if such tree, shrub or vegetation is, in his or her reasonable opinion, unsightly or constitutes a nuisance.

13 Prohibitions

No person shall -

- [a] enter or leave a cemetery except by the proper gates;
- [b] sit, stand or climb upon or over any grave, ornamentation, gate, wall, fence or building in a cemetery;
- [c] drive a motor vehicle or any other form of mechanised transport in a cemetery except upon the roads provided for that purpose;
- [d] conduct a religious ceremony or service according to the rites of any religious group, body or community in that part of a cemetery set aside for members of any other religious group, body or community;
- [e] expose or convey a body in a cemetery or other public place in such a manner so as to offend the public;
- [f] mark, draw on, scribble on, place an advertisement on, or in any way deface, any burial plot, grave, ornamentation, gate, wall, fence or building in a cemetery;
- [g] smoke in a cemetery;
- [h] create or allow to be created, a nuisance in a cemetery;
- [i] disrupt or allow to be disrupted, any funeral proceedings in a cemetery;
- [j] discharge any firearm in a cemetery, except as a salute at a military funeral;
- [k] use or cause to be used, any cemetery for any purpose likely to offend the public;
- [l] bring any cat, fowl or other animal or bird into a cemetery, or allow it to wander therein;



- [m] trade or hawk goods or services in a cemetery;
- [n] drive a motor vehicle or any other form of mechanised transport in a cemetery at a speed in excess of 20km/h; or
- [o] obstruct, resist or oppose the caretaker or an authorised official in the course of his or her duties, or refuse to comply with any order or request which the caretaker or authorised official is entitled to make in terms of this by-law.

CHAPTER 3

CREMATORIA

14 Establishment of crematoria

- [1] The authority provided to the municipality in terms of this by-law to establish cemeteries shall be deemed to extend to and include the establishment of crematoria, provided that no body shall be burned in any crematorium until -
 - (a) the plans and site thereof have been approved by the municipality; and
 - (b) the crematorium has been certified by the municipality as complete, built in accordance with such plans, and properly equipped for the purposes of cremation.
- [2] The provisions contained in sections 2, 3, 4, 7 and 13 of this by-law shall apply, *mutatis mutandis*, to this chapter.

15 Site of crematorium

No crematorium shall be constructed –

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

16 Donations of land

A municipality may accept –

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

17 Regulations in respect of cremation

The municipality may make regulations with regard to cremation and the disposal or interment of ashes.

18 Prevention of cremation

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

CHAPTER 4**EXHUMATIONS****19 Restrictions on exhumation**

- [1] Except as herein provided, no person shall exhume, disturb, remove or re-inter any body at a cemetery without the prior written approval of the municipality and otherwise in accordance with such conditions as may be imposed by the municipality in terms of subsection [3].
- [2] The provisions of subsection [1] shall not apply in respect of the exhumation and re-interment of any body which has mistakenly been interred in a grave reserved for the interment of another body if –
- (a) compliance with the provisions of subsection [1] would unduly delay the interment of such other body; and
 - (b) the exhumation and re-interment are carried out in accordance with the order of a court.
- [3] The approval contemplated in subsection [1] may be granted by the municipality, provided that –
- (a) conditions may be imposed in respect thereof for the sake of public health; and
 - (b) a health officer or an authorised official shall be present at the exhumation or during the activities contemplated in terms of subsection (1).

20 Application for the approval of the municipality

- [1] Any person who wishes to obtain the approval required in terms of section 19[1] shall make written application to the municipality and shall –



00000TE0

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

CHAPTER 5

CLOSED OR DISUSED CEMETERIES

1 Closure of cemeteries

- [1] The municipality may close any cemetery or portion thereof, provided that -
- (a) the closure is by reason of the prevention of danger to the health of the public, or any other justifiable reason;

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

22 Maintenance of closed or disused cemetery

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

23 Use of disused cemeteries

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



24 Notification to local community

Nothing contained in this chapter shall be construed so as to detract from the requirements of Section 21 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), as amended from time to time, in connection with the notification of anything by the municipality to the local community.

CHAPTER 6

GENERAL PROVISIONS

25 Prohibition of interment

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

26 Indigent burials

- [1] The next of kin in respect of an indigent deceased may apply to the municipality for an indigent burial or cremation, in which event the municipality shall -
- (a) consider such application promptly and may request additional information from the applicant for such purposes;
 - (b) in writing, either approve or refuse the application within 3 (three) days of the date upon which the application was received.
- [2] If the municipality has approved the application referred to in subsection [1], then -
- (a) an indigent deceased shall be buried or cremated in accordance with the conditions specified by the municipality; and

- (b) the municipality shall be responsible for such burial or cremation, as the case may be, notwithstanding the appointment of a service provider to carry out such burial or cremation;

[3] Where an indigent deceased has been cremated –

- (a) the ashes must be retained by the municipality for a period not exceeding 12 (twelve) months; and
- (b) if the ashes are not claimed within the aforesaid period of 12 (twelve) months, then they may be buried in an ash grave provided by the municipality for such purposes.

27 Identification of burial plots or graves and keeping of registers

[1] Each burial plot or grave located at a cemetery shall be identified by number allocated by the municipality, such that -

- (a) the location of the burial plot or grave, and details of any deceased interred therein, may be readily ascertained by the public; and
- (b) the number is listed in a register maintained by the municipality.

[2] The municipality shall maintain a register of all interments and cremations performed at cemeteries and crematoria, such register to stipulate -

- (a) the names of the deceased;
- (b) the deceased's date of birth and date of death; and
- (c) the identification of the burial plot or grave in respect of which the deceased was interred, provided that no such detail is necessary in the event of the deceased's cremation.

[3] The municipality shall maintain a register of all rights to burial in a specified burial plot or a specified cemetery, as envisaged by this by-law, including -

- (a) the names and address of the holder of such a right;
- (b) the date and number of any certificate setting out the conditions attaching to such right; and
- (c) details of any permission granted by the municipality to the holder for the holder's disposal of such right.

[4] The registers referred to in subsections [1], [2] and [3] may constitute one comprehensive record to be kept securely at the principal address of the municipality.



00000150

- [5] Any register contemplated by this section shall be made available to any member of the public upon receipt of reasonable request.

28 Offences and penalties

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

- (a) a fine of R60 000, or imprisonment for a period of 12 (twelve) months, or such imprisonment without the option of a fine, or both such fine and such imprisonment;
- (b) in the case of a continuing offence, an additional fine of R600, or an additional period of imprisonment of 1 (one) day, or such additional imprisonment without the option of a fine, or both such additional fine and imprisonment, for each day on which such offence is continued; and
- (c) a further amount equal to any costs and expenses found by a court to have been reasonably incurred by the municipality as a result of such contravention or failure.

29 Regulations

[1] The municipality may make regulations regarding –

- (a) the granting of approval for –
 - (i) the establishment of a cemetery, as contemplated in terms of section 2[2](a);
 - (ii) the interment of a body at any land set aside and demarcated for human burials by any person other than the municipality, as contemplated in terms of section 3(a)(ii);
 - (iii) the plans and site of a crematorium, as contemplated in terms of section 14[1](a); and
 - (iv) the exhumation, disturbance, removal or re-interment of a body, as contemplated in terms of chapter 4, including -
 - (aa) the conditions attached to such approval, as contemplated in terms of sections 19[1] and 19[3];
 - (bb) the form and contents of the written application contemplated in terms of section 20[1];
 - (v) an application for an indigent burial, as contemplated in terms of section 26[1];

- (b) the steps to be taken by it to ensure that the use or condition of the land contemplated in terms of section 3 does not constitute a health risk or nuisance to the community residing within the immediate vicinity;
- (c) the terms and conditions for the taking over, by the municipality, of the conduct and control of a cemetery, as contemplated in terms of section 4[2];
- (d) the identification and designation of any portion of a cemetery for the burial of persons of a religious group, body or community, as contemplated in terms of section 5[1];
- (e) with regard to the disposal of a right to burial, as contemplated in terms of section 6 –
 - (i) the conditions of such disposal or sale; and
 - (ii) the form and contents of the certificate mentioned in the said section;
- (f) the granting of written permission for burial, including –
 - (i) the conditions attached thereto, as contemplated in terms of section 7[1](b); and
 - (ii) any additional information required, as contemplated in terms of section 7[2];
- (g) the burial of a body, as contemplated in terms of section 8;
- (h) the measurements of burial plots and graves, as contemplated in terms of section 9, including amendments thereto;
- (i) with regard to ornamentation in terms of section 10 –
 - (i) the issuing of a permit, as contemplated in terms of sections 10[1] and [3], including –
 - (aa) the form and contents thereof; and
 - (bb) guidelines as to when such permit may be refused;
 - (ii) the measurements of such ornamentation, as contemplated in terms of section 10[2], including amendments thereto; and
 - (iii) the granting of permission for the activities contemplated in terms of section 10[4];



06100000

- (j) the issuing of a written notice in connection with the maintenance of graves and ornamentation, as contemplated in terms of section 11[1], including –
 - (i) the form and contents thereof; and
 - (ii) the delivery or publicisation of such notice;
 - (k) the determination of tariffs, as contemplated in terms of section 11[4];
 - (l) procedures and requirements for cremation and disposal or interment of ashes, as contemplated in terms of section 17;
 - (m) conditions attached to permission for interment in a cemetery that has been closed, as contemplated in terms of section 21[2];
 - (n) the conditions to be specified by the municipality with regard to the burial or cremation of an indigent deceased, as contemplated in terms of section 26[2](a);
 - (o) the identification of burial plots or graves, and the keeping of registers, as contemplated in terms of section 27, including –
 - (i) the manner of identification; and
 - (ii) the form and contents of the registers, required in terms of the said section;
 - (p) (i) the prescription of penalties for the offences contemplated in terms of section 28; and
 - (ii) the amendment of such penalties from time to time;
 - (q) any matter which may be prescribed in terms of this by-law, and any matter which may facilitate the application of this by-law.
- [2] (a) The municipality shall, not less than 1 (one) month before promulgating a regulation in terms of subsection (1), cause a draft of the regulation to be communicated to the local community and to be made public in terms of sections 21 and 21A of the Local Government: Municipal Systems Act, 2000 [Act No. 32 of 2000], together with a notice declaring the intention of the municipality to issue such a regulation and inviting comments or representations.
- (b) If the municipality decides to alter the draft regulation as a result of comments or representations received pursuant to such invitation, then it shall not be necessary to communicate and make public the alteration before the amended draft is promulgated as a regulation.



30 Repeal of by-laws

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

31 Short title

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



07100000

08100000

0000000000
09100000

00000101


Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001.
Tel: (012) 334-4507, 334-4511, 334-4509, 334-4515
Also available at the Legal Advisory Services, Province of the Eastern Cape, Private Bag X0047, Bisho, 5605. Tel. (040) 635-0052