

DEPARTMENT OF TRADITIONAL AND LOCAL GOVERNMENT AFFAIRS

PROVINCIAL GOVERNMENT NOTICE

No., 2015

I, under powers vested in me by section 14(2) of the Local Government: Municipal System Act, 2000 (Act No. 32 of 2000), and after having consulted the Minister of Provincial and Local Government Affairs and Organized Local Government in the Province, hereby make the standard By-laws contained in the Schedule hereto.

Signed at _____ on this _____ day of _____ Twenty Fifteen.

N DUBE

Member of the Executive Council of the Province of KwaZulu-Natal responsible for local government

CEMETARY AND CREMATORIA BY-LAWS

Be it enacted by the Council of the Mandeni Local Municipality, in terms of Section 156 of the Republic of South Africa Act No. 108 of 1996, and approval of the Member of the Executive Council responsible for Local Government in terms of Section 104(2) Funeral, Burial and Cremation Services Act of 2002 in the Province of KwaZulu-Natal, read with section 11 of the Local Government: Municipal Systems Act No. 32 2000, as follows:

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CHAPTER

GENERAL

1. Definitions

In these by-laws, unless the context otherwise indicates:-

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

“After-hours fee’ means a fee over and above the set norm of fee for burial or cremation outside normal week day cemetery operating hours, save in the case of cremations or burials, which,

because of religious belief, are undertaken after such hours, or in the case of burial, where the mourners undertake to close the grave;

“Ashes” means the cremated remains of the body;

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

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

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

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

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

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

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

“Council” means the Mandeni Municipal Council

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

“Crematorium” means a crematorium as defined in section 1 of the Ordinance and includes the buildings in which the ceremony is conducted and the cremation carried out;

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

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

“Exhumation” means the removal of the body from its grave;

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

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

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

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

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

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

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

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

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

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

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

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

“Officer in charge” means the person in the employ of the Council who, from time to time, is in control of any cemetery.

“Prescribed” means prescribed by the Council;

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

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

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

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

CHAPTER 2

ESTABLISHMENT AND MANAGEMENT OF CEMETERIES

2. Establishment of cemeteries

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

(2) The Council may set aside, reserve and demarcate within a cemetery, in accordance with an approved layout plan, such areas as the Council may deem necessary for exclusive use by the members of a particular religion or denomination, or for the burial of adults, children, security forces or war heroes, or for the creation and management of the following sections:

- a) Berm-section where memorial work of a restricted size may be erected only on a concrete base provided by the Council at the top or bottom end of a grave the top surface of graves are level and the Council will cut planted as well as natural grass as part of its maintenance program;
- b) Monumental-section where memorial work erected shall cover the entire grave area,
- c) Semi-monumental section where memorial work, without a restriction on the size, may be erected only a concrete base at the top end of a grave, which base will not be provided by the Council;
- d) Natural-grass section where the surface of graves are leveled. Graves are identified by numbers affixed on top of the graves in such a way that lawnmowers can be used to cut the natural grass without damaging the numbers;
- e) Traditional-section where memorial work does not have to cover the entire grave area, and may be erected on graves that are not supplied with a concrete base as required in the Berm-section. The surfaces of graves are level;
- f) Columbarium-section where ashes may be buried in a niche in a memorial wall or wall of remembrance provided by the Council;

3. Official hours

- 1) The cemetery and the office of the caretaker shall be open during the hours as determined by the Council. The cemetery office of the caretaker shall be open from Monday to Friday.
- 2) Burials shall take place on the days and during the hours as determined by the Council.
- 3) The Council has the right to close a cemetery or any portion thereof to the public for such periods and for such reasons as the Council may deem fit
- 4) No person shall be or remain in a cemetery or part thereof before or after the official hours as determined by the Council or during any period when it is closed for the public, without the permission of the caretaker.

4. Register

- 1) A register of graves and burials shall be kept by the caretaker.
- 2) Such register shall be completed as far as possible immediately after a burial has taken place, with reference to the prescribed particulars contained in the burial order concerned.

5. Numbering of graves

- 1) All graves in a cemetery that are occupied or for which a burial or has been authorized in terms of the provisions of this by-law shall be numbered by the Council.
- 2) The number shall be affixed to the grave and indicated on a plan to be kept available in the caretaker's office.

6. Reservation of graves

- 1) No reservation of a grave in a cemetery shall be allowed.
- 2) Reservation of graves made and recorded in the official records of the Council in terms of any previous by-laws shall still be valid and the Council shall honor such reserved rights.

7. Transfer of reserved rights

- 1) A reserved right as contemplated in section 6(2) may not be transferred without the prior approval of the Council.
- 2) Application to transfer such right shall be made to the caretaker in writing by completing and submitting a prescribed application form.
- 3) If the application is granted, a certificate will be issued in favour of the transferee who will become the holder
- 4) The reserve right may be cancelled on request of the holder and if the request is approved by the Council, the amount paid by the holder (if any) minus 10% administration fees, will be refunded to the holder.

8. Number of corpse in a grave

- 1) Only one corpse may be buried in a grave with measurements as contemplated in this by-law.
- 2) Only two corpses may be buried in a grave with measurements as set out in sub-section 15(4): Provided that the application for the burial of two corpses has been made to the caretaker in writing by completing and submitting the required application form before the first corpse is buried.
- 3) After the re-opening of a grave for the purpose of the burial of a second corpse as mentioned in sub-section 9(2) in that grave, a concrete layer of not less than 25mm thick shall be cast above the coffin previously buried.
- 4) If on re-opening any grave, the soil is found by the Medical Officer of Health to be offensive or dangerous to the general health of people, the situation will be handled in consultation with the Medical Officer of Health.

9. Number of Corpses in a coffin

- 1) A deceased stillborn child and his or her deceased mother may be buried in the same coffin at the fee for a single interment of an adult.
- 2) Still-born twin babies may be buried in the same coffin at the fee for a single interment of a stillborn child.

CHAPTER 3

BURIALS

10. Application for a burial

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

- a) the prescribed burial order;
- b) the prescribed fees; and
- c) a reservation certificate, if applicable;

(2) No person shall, without the prior written approval of the Council, execute, cause, or allow a burial in any other place in the municipality than in a cemetery established and managed by the Council. This includes the burial of a corpse, of ashes and of a cadaver.

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

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

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

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

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

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

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

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

11. Burial of a corpse

- 1) All graves shall be provided by the caretaker with the exception of brick-lined or concrete-lined graves, in which cases the brickwork or concrete work shall be carried out by the

undertaker under the supervision of the caretaker and in conformity with the specifications applicable to ordinary graves.

- 2) There shall be at least 1 200mm of soil between the top of the adult coffin and the ground surface, and at least 900mm of the top of a child coffin and the ground surface.
- 3) All corpses shall be placed in a coffin for the burial thereof, except as provided for the Muslim community.
- 4) No person shall without the prior permission of the caretaker conduct any religious ceremony or service according to the rites of one denomination in any portion of a cemetery reserved by the Council in terms of the provisions of this by-law, for the use of some other denomination.
- 5) No person shall permit any hearse in a cemetery to leave the roads provided, and every hearse shall leave the cemetery as soon as possible after the funeral for which it was engaged.
- 6) Every person taking part in any funeral procession or ceremony shall comply with the directions of the caretaker as to the route to be taken within the cemetery.
- 7) No person shall convey or expose a corpse or any part thereof in an unseemly manner in any street, cemetery or public space.
- 8) Every application and every document relating to any burial shall be marked with a number corresponding to the number in the register referred to in section 4 and shall be filled and preserved by the Council for a period of not less than ten years.
- 9) Every coffin or body upon being placed in any grave shall, at once, be covered with 500mm of earth.
- 10) No person shall disturb any human remains or any soil adjacent thereto in any cemetery, except where such disturbance is expressly permitted by this bylaw or by an order of court.

12. Burials of ashes

- 1) Ashes may be buried in a coffin and only two such coffins containing ashes may be buried in extra deep grave; provided that a coffin does not exceed the average body weight of 70 kg, and further-more that the grave is re-adjusted to the prescribed depth and measurements.
- 2) No person shall execute a burial or cause a burial of ashes to be executed in a cemetery, unless written permission for the burial has been obtained, a specific grave or niche has been allocated for the purposes of the burial has been arranged with the caretaker.
- 3) Application for the burial of ashes for definite periods or in perpetuity, or for the provision of memorials tablets of approved material to be fixed on the building, columbarium or other facility shall be made to the caretaker in writing by completing and submitting a prescribed application form.
- 4) Niches will be allocated by the caretaker strictly in the order in which the applications therefore are received and no reservations for future use will be made.
- 5) An application for permission for a burial must be submitted at least 24 hours prior to the planned burial, failing which the caretaker may refuse the application.
- 6) An urn or casket containing ashes that has been deposited in a building, columbarium, or other facility shall not be removed without the caretaker's prior written consent.

- 7) Every niche containing ashes shall be sealed by a tablet approved by the Council and shall only be opened for the purpose of withdrawing an urn or casket contained therein for disposal elsewhere, or for the purpose of depositing an additional urn or casket therein where after it will once again be sealed.
- 8) Application for the opening of a niche shall be made to the caretaker in writing by completing and submitting a prescribed application form.
- 9) No person shall introduce any material into the columbarium for the purpose of constructing or erecting any memorial work therein unless and until:
 - a) approval for the burial has been obtained from the Council;
 - b) approval for the erection of the memorial work has been obtained from Council; and
 - c) the prescribed fees have been paid which shall be determined by Council from time to time.

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

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

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

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

13. Burial of a cadaver

The remains of a corpse used at an educational institution for the education of students, generally known as a cadaver, may be buried in one coffin and two such coffins containing cadavers may be buried in an extra deep grave as contemplated in sub-section 15(4): Provided that a coffin does not exceed the average body weight of 70kg, and furthermore that the grave is re-adjusted to the prescribed depth and measurements.

14. Persons dying outside the municipal area

The provisions of these by-laws shall apply mutatis mutandis to any burial in a cemetery of a person who has died outside the municipality

15. Grave measurements

- 1) The excavation of a grave for an adult shall be at least 1820mm deep, 2300mm long, and 760mm wide.
- 2) The excavation of a grave for a child shall be at least 1370mm deep, 1520mm long and 610mm wide.
- 3) In a event that a grave of a greater depth, length or width than those specified above is required, application in respect thereof, together with extra prescribed fees that are due, shall be made to the caretaker with the application to obtain permission for a burial.

- 4) The excavation of an extra deep grave for the burial of two corpses shall be at least 2400mm deep 2300mm long and 760mm wide.
- 5) Deviations from measurements of graves of graves shall be follows:

Extra wide	: 2300mm long
	: 840 mm wide
Extra long	: 2530mm long
	: 760mm wide
Rectangular small	: 2300mm long
	: 900mm wide
Brick- nogging	: 2600 mm long
	: 1050mm wide

- (6) The area of a rectangular grave for an adult shall be 1500mm wide by 2600 mm long.
- (7) The area of a grave for an adult shall be 1210mm wide by 2430mm long.
- (8) The area of a grave of a child shall be 1210mm wide by 1520mm long. If a coffin is too large, an adult grave shall be used.

CHAPTER 4 RE-OPENING OF GRAVES AND EXHUMATIONS

16. Conditions of exhumations

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

- a) Premier of the Provincial Government;
- b) the Council;
- c) the provincial Department of Health;
- d) the Administrator of cemeteries;
- e) the Council's Medical Officer of Health or
- f) by an order of a court having jurisdiction over such matters.

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

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

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

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

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

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

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

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

(9) The South African Police Service must—

- a) if there is proof of illegal burial immediately exhume the body; and
- b) take it to a government mortuary for investigation.

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

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

17. Exhumation and reburial

- 1) The Council may, if a body has been buried in contravention of these By-laws, cause the body to be exhumed and re-buried in another grave.
- 2) The relatives of the deceased must be –
 - a) notified of the intended exhumation and re-burial; and
 - b) allowed to attend.

18. Screening of Exhumation

- 1) A grave from which a body is to be exhumed must be screened from the view of the public during the exhumation
- 2) The person carrying out the exhumation must provide a suitable receptacle for each body of remains.

CHAPTER 5

MISCELLANEOUS

19. Injuries and damages

- 1) A person using a cemetery do so at his own risk, and the Council accepts no liability whatsoever for any personal injuries sustained by such person or for any loss of or damage to such person's property relating to or resulting from the aforementioned usage of the cemetery.
- 2) A person using the cemetery accepts full responsibility for any incident, damages or injuries that may be caused by or that may result from the aforementioned use of the cemetery and he or she accordingly indemnifies the Council, its members, employees or agents, whether in personal or official capacity, against liability for all claims from which ever nature by himself, his or her dependants or third parties in respect of any patrimonial loss, consequential damages, injuries or personal prejudice that may be suffered or sustained in connection with

or resulting from such a person's use of a cemetery, as well as damages to Council property at the cemetery.

20. Fire-arms and traditional weapons

No fire-arms and traditional weapons are allowed in the grave yard.

21. Offences and penalties

1) Any person contravening or failing to comply with any of the provisions of these by-laws shall be guilty of an offence and shall upon conviction by a court be liable to a fine not exceeding R 60 000, or imprisonment for a period not exceeding three years or both a fine as well as period of imprisonment, or such other fine or period of imprisonment which the Minister of Justice may from time to time determine in terms of the provisions of section 92 of the Magistrate's Courts Act. 1994 (Act No 32 of 1994).

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

22. Complaints

Any person wishing to lodge a complaint shall lodge such complaint, in writing with the Director.

23. Charges

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

24. Rights on Graves

No person shall acquire any right to or interest in any ground or grave in any cemetery.

25. Consents, notices and orders

Any written consent, notice or other order issued by the Council in terms of these by-laws, with the exception of consent by Director or any officer authorized by him and shall be prima force evidence of the consents of such a designed consent, notice or other order.

26. Religious Ceremonies

- 1) The members of any religious denomination may conduct religious ceremonies in connection with any interment of memorial service subject to the control and by-laws of the Council.
- 2) No animal may be slaughtered on the premises of the cemetery regardless of any religious ceremony which may require an animal to be slaughtered.

27. Hearses and vehicles and Cemeteries

- 1) No person shall cause any hearse or vehicle, as defined by the Road Traffic Act, while within a cemetery to depart from the carriage drives or certain any hearse within any cemetery after the removal of the body from such hearse or vehicle. Every hearse or vehicle such removal shall leave the cemetery by the route indicated by the caretaker.
- 2) The cemetery is a public place and all laws applicable to the driving of a vehicle and the use of a public road will be applicable inside the premises of the cemetery.

28. Exposure of bodies

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

29. Instruction of caretaker

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

30. Music inside cemetery

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

31. Interments Attended by large Numbers of People

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

CHAPTER 6

REPEAL OF BY_LAWS

Repeal of existing By-laws

32. The Council's existing Cemetery and Crematoria by-laws are hereby repealed.

Short title and commencement

33. These by-laws shall be called the Cemetery and Crematoria By-laws, 2015, and shall come into operation on