

**LOCAL AUTHORITY NOTICE 1545 OF 2020****CITY OF TSHWANE****NOTICE OF THE CEMETERY AND CREMATORIUM BY-LAW REVIEW**

The Acting City Manager of the City of Tshwane Metropolitan Municipality hereby publishes in terms of sections 5 and 6 of the Local Government: Municipal Property Rates Act, 2004 (Act 6 of 2004), read with section 7 of the Gauteng Rationalisation of Local Government Affairs Act, 1998 (Act 10 of 1998), Section 13 of the Local Government: Municipal System Act, 2000 (Act 32 of 2000) and Section 162 of the Constitution of the Republic of South Africa, 1996 the City of Tshwane Metropolitan Municipality: Property Rates Policy and the Property Rates By-Laws, as contemplated in the hereunder and approved by the Administrator on 30 June 2020.

The said By-Laws and Policy comes into operation with effect from date of publication hereof in the *Provincial Gazette*

**MMASEABATA MUTLANENG  
ACTING CITY MANAGER**

(Notice 128 of 2020)  
9 DECEMBER 2020

**CITY OF TSHWANE****CEMETERY AND CREMATORIUM BY-LAW REVIEW**

To provide for By-laws to give effect to the rates policy of the municipality in terms of section 6 of the Local Government: Municipal Property Rates Amended Act, 2014 (Act 29 of 2014), and to provide for any matters incidental thereto.

**PREAMBLE**

To enable the City of Tshwane Metropolitan Municipality to properly assume its' competencies, functions, duties and responsibilities in respect of cemeteries, funeral parlours and crematoria as provided for in PART "B" of Schedule 5 of the Constitution of the Republic of South Africa, 1996 in order to properly manage and control such activities and miscellaneous activities incidental thereto within a sustainable legal environment for and to the benefit of its' community and interested stakeholders. To maintain a high level of professional standard in relation compelling legal and environmental requirements regarding burials, funerals, funeral parlours and crematoria.

WHEREAS the City of Tshwane Metropolitan Council recognises that each person who passes on is entitled to be buried in a dignified, respectful and lawful manner;

AND WHEREAS the City of Tshwane recognises that in order to give effect hereto it must lay down rules and regulations for the accountable, effective and efficient management and control in respect of burials, funerals, funeral parlours, crematoria and the environment;

AND WHEREAS the City of Tshwane has by virtue of PART "B" of Schedule 5 of the Constitution of the Republic of South Africa, 1996 the competencies to regulate, manage and control the same;

THEREFORE, BE IT ENACTED by the Municipality as follows:

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## CHAPTER I

### DEFINITIONS, ESTABLISHMENT AND CONTROL

#### DEFINITIONS

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

“**Administrator of cemeteries**” means the head of the section or department of the Council which has the responsibility for the administration of the cemeteries of the Council, and any person acting in his or her stead or any person duly authorised by the Council to act on his or her behalf;

“**Adult**” means a deceased person over the age 9 years and any deceased person the dimensions of whose coffin cannot be accommodated in an excavation of 1,500mm deep, 1 200mm long and 750mm wide;

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

“**After-hours fee**” means a fee over and above the set norm of fee for burial or cremation outside normal operating hours, save in the case of cremations or burials;

“**Ashes**” means the remains of a corpse that are the end-product of cremation;

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

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

“**Berm**” means a concrete strip constructed by the Municipality's contractor at a grave plot on which only a headstone may be erected, and includes an ash berm;

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

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

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

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

**“Burial”** means the burying of a corpse or inhumation into earth or any other form of burial and includes a tomb and any other mode of disposal of a body. Methods of disposal of the body:

- (a) In-ground burial/Conventional burial
- (b) Above-ground burial;
- (c) Cremation; or
- (d) Freeze reduction and biodegradation

**“Bury”** has a corresponding meaning to burial;

**“Burial order”** means an order issued in terms of the Births and Deaths Registration Act, 1992 (Act 51 of 1992), whereby authorisation is granted for the burial or cremation of a corpse;

**“Cemetery”** means an area of land or part thereof within the Municipal area set aside by Council as a cemetery;

**“Child”** a deceased person below the age of 9 years and any deceased person the dimensions of whose coffin can be accommodated in an excavation of 1 500mm deep, 1 200mm long and 750mm wide;

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

**“Columbarium”** means the place set aside in the basement of the crematorium or chapel for the placement in a niche of receptacle containing ashes;

**“Corpse”** means the body of a dead human being, including the body of a stillborn child and foetus;

**“Council”** means a Municipality established in terms of section 12 of the Local Government: Municipal Structures Act, 1998 (Act No.117 of 1998) or any structure, political office bearer, councillor or any staff member acting under council’s delegated or sub-delegated authority;

**“Cremate”** has a corresponding meaning to cremation;

**“Cremation”** means the disposal of a corpse by means of incineration, and

**“Crematorium”** means that section of a cemetery that is used for the cremation of corpses;

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

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

**“Deputy Director - Cemetery Services”** means the person appointed by the Municipality as head of region’s cemeteries under the control of the Municipality or his or her duly authorised representative;

**“Director - Cemetery Services”** means the person appointed by the Municipality as head of all the cemeteries under the control of the Municipality or his or her duly authorised representative;

**“Eminent persons”** means person identified as famous, distinguished Councillors and other recognised, identified leaders in City of Tshwane (CoT).

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

“**Divisional Head**” means the person appointed by the Municipality as Divisional Head: Environmental Management & Parks or his or her duly authorised representative;

“**Foreign National**” is a term used to refer to a person who is not a citizen of the host country in which he or she is residing or temporarily sojourning

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

“**Funeral director**” a person whose job it is to arrange for the bodies of dead people to be buried or cremated. An Undertaker.

“**Garden of remembrance**” means a section of a cemetery or crematorium set aside for the erection of memorial work, placing of 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 a place;

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

“**Group Head**” means the person appointed by Municipality as the Head of the Environment and Agriculture Management Department or his/her duly authorised representative

“**Headstone**” means a commemorative stone erected on a berm strip;

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

“**Interment**” means burial or cremation or any other mode of disposal of a corpse;

“**Indigent person**” means a destitute person who has died in indigent circumstances, or if no relative or other person, welfare organisation 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 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;

“**Medical referee**” means a Doctor appointed by the Crematorium Authority and approved by the Group Head: Environment and Agriculture Management Department.

“**Memorial**” means any tombstone, monument, kerbing, grave-guard, stone chippings, plaque, and inscription on it, or other similar work erected or intended to be erected in any cemetery or crematorium to commemorate a deceased person;

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

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

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

“**Municipal area**” means the area under the control and jurisdiction of the City of Tshwane Metropolitan Municipality;

“**Metropolitan Municipality**” means the City of Tshwane Metropolitan Municipality established by General Notice 6770 in Provincial Gazette Extraordinary 141 of 1 October 2000 in terms of the provisions of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), and promulgated in terms of Section 12(1) of the Local Government: Municipal Structures Act No 117 of 1998 as amended, and its successors in law as amended from time to time and/or title and/or its assigns and “City” shall have a corresponding meaning;

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

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

**“Niche”** means a space in a columbarium or in a wall of remembrance in which a funeral urn containing ashes can be placed and over which a memorial is erected;

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

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

**“Prescribed”** means determined by the Council;

**“Prescribed fee”** means a fee determined by the Council by resolution in terms of section 10G(7)(a)(ii) of the Local Government Transition Act, 1993( Act No. 209 of 1993), or any other applicable legislation;

**“Private cemetery”** means land which is approved for use as a cemetery but not owned or managed by the Council;

**“Private crematorium”** means an approved building where deceased persons are cremated but is not owned or managed by the Council;

**“Regional Executive Director”** means the person appointed by Council as the Head of the Service Delivery of the municipality for a particular region of the City of Tshwane or his/her duly authorised representative;

**“Reservation Certificate”** means a document issued by the Council granting the right to bury a corpse in a certain grave;

**“Reservation certificate holder”** means a person to whom the right to bury a corpse in a certain grave has been granted;

**“Senior Administrative Officer”** means the person appointed by the Municipality to be the officer responsible for Region's cemeteries;

**“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);

**“Stillborn”** in relation to a child, means viable but having showed no sign of life at birth.

**“Stone mason”** means a person who cuts, prepares and builds with stone;

**“Unnatural death”** means caused by external causes—~~injury~~ or poisoning, which includes death due to intentional injury such as homicide or suicide, and death caused by unintentional injury in an accidental manner or murder.

## ESTABLISHMENT

2. The Municipality may from time to time set apart for the purpose of a cemetery any piece of land within the Municipality's area of jurisdiction. It may set apart a separate area within a cemetery as an “Honorary Acre” for the burial of eminent people and may also establish a monumental section and a berm section within a cemetery.

## CONTROL

3. All the cemeteries which have been established or which may be established within the area of jurisdiction of the Municipality must be under the control of the Municipality.

## CHAPTER II

### CEMETERIES

#### GENERAL

4. No person may bury a corpse or cause a corpse to be buried within the Municipality's area of jurisdiction, other than in a cemetery.
5. The Deputy Director: Cemetery Services must keep a burial register in duplicate.
6. The burial register must, as far as possible, be filled in immediately after a burial has been conducted.
7. One copy of the burial register must be kept up to date at the office of the Deputy Director: Cemetery Services and the other copy at a place that the Municipality may determine from time to time.
8. A corpse may not be buried in a cemetery without the permission of the Municipality, granted in writing by the Deputy Director: Cemetery Services.
9. Permission in terms of section 8 is not granted unless –
  - (a) A burial order authorising the burial is submitted to the Group Head or any employee appointed by him/her; and
  - (b) The relevant fees, as determined by the Municipality from time to time, have been paid.
10. Where a grave has been reserved in terms of Section 24 of this by-law, the reservation certificate must be produced in lieu of the payment of the reservation fees, and only the grave service fee is levied.
11. The cemetery office must always be open on official working days from 07:30 to 15:45.
12. Entrances at every cemetery must be open from 07:00 to 18:00 daily during the months of September to March and from 07:00 to 17:00 daily during the months of April to August.
13. Burials must take place from Monday to Thursday from 08:00 to 14:30 and on Fridays from 08:00 to 13:30 in the presence of the cemetery official.
14. Burials may take place after hours or on a Saturday, Sunday or public holiday only with the special permission of the Deputy Director: Cemetery Services.
15. No person may –
  - (a) enter or exit any cemetery except through the gates provided for that purpose; and
  - (b) enter any office or enclosed area in a cemetery except to undertake a lawful activity in accordance with the provisions of these by-laws.
16. No person may place any articles outside of or on the sidewalks at a cemetery with the intention of selling the articles.
17. No person may carry on an occupation or solicit any orders for any business, or exhibit, distribute or leave any business card or advertisement inside or outside a cemetery, except on sites specifically determined and set aside for that purpose.
18. No person may sit, stand, walk or climb on or over any grave, memorial, gate, wall, fence or building in a cemetery, except in the case of graves furnished with a berm.
19. No person may bring any animal or animal-drawn vehicle into a cemetery without the permission of the cemetery official. Any animal found in a cemetery may be impounded or removed by the cemetery official without rendering the Municipality liable to pay any compensation.
20. No person may –
  - (a) Wantonly destroy or damage or cause to be destroyed or damaged any grave, memorial, wall, building, fence, railing, path or other construction in a cemetery;
  - (b) Place, draw or erect any advertisement, poster or placard on any grave, memorial, wall, building, fence, railing, path, vegetation, furniture or other structures in a cemetery; or
  - (c) In any other way deface any grave, memorial, wall, building, fence, railing, path, vegetation, furniture or other structure in a cemetery.

21. No person may, unless expressly permitted to do so by these by-laws or unless the consent of the cemetery official has been obtained -
- (a) disturb the soil in a cemetery;
  - (b) plant or uproot any plant, shrub or flower in a cemetery; or
  - (c) in any way interfere with any grave or structure in a cemetery.
22. No person may –
- (a) play any game or sport in a cemetery;
  - (b) discharge any firearms in a cemetery (except as a salute at a military funeral);
  - (c) discharge any air gun in a cemetery;
  - (d) disturb or annoy any person in a cemetery; or
  - (e) do anything which might disturb the peace or undermine propriety in a cemetery.
23. No person may –
- (a) obstruct, resist or oppose the Senior Administrative Officer or any other official of the Municipality in the course of the performance of his or her duties; or
  - (b) refuse to comply with any order or request that cemetery official may issue under these by-laws.

### RESERVATION OF GRAVE PLOTS

24. A grave plot in respect of which a burial is authorised in terms of these by-laws must be reserved in the name of the next of kin and, if there is no known next of kin, in the name of the person who applied for the grave. Where a burial is authorised at the request of an organisation, association, institution or a government, the grave plot allocated for the burial must be reserved in the name of that organisation, association, institution or government.
25. Grave plots may only be reserved when they are needed for a burial, except when an additional grave is reserved for the deceased spouse who is in his/her retirement age -
- (a) only one grave plot within the monumental and/or berm section of the cemetery is reserved;
  - (b) the reservation is valid for a period of 10 years only and is renewed every five years thereafter, by application;
  - (c) the grave plot reserved is adjacent to that of the deceased; and
  - (d) the reservation certificate holder pays the tariff as determined by the Municipality from time to time.
26. Reservation certificates must be issued by the Director: Cemetery Services or his nominated representative for grave plots reserved in terms of Section 24.
27. The Municipality may after a period of 10 years, and at its own discretion, use the reserved plot for other purposes the ground has been allocated for.
28. No person may acquire any title, ownership or dominium in respect of any reserved ground. The reservation certificate holder acquires only the right to bury a corpse in the reserved grave and the right to erect a memorial on the reserved grave.
29. Reservation certificates that have been issued may only be transferred, assigned or alienated if the written permission of the Deputy Director: Cemetery Services and of reservation certificate holder or the duly authorised representative of the reservation certificate holder has been obtained.
30. Reservation certificates may, with the special permission of the Deputy Director: Cemetery Services, be transferred from one cemetery to another cemetery, when needed for a burial. The reservation certificate holder is required to pay the difference should the cemetery to which he or she intends to transfer the reservation, charges higher fees.

### ORDERS FOR BURIAL

31. The notice of a burial, together with the relevant burial order, must be submitted to the office of the Deputy Director: Cemetery Services or his/her delegate not later than eight working hours before the burial is to take place, except by written permission of the Deputy Director.

32. A person applying for the reopening of a grave/ second interment must sign a reopening document granting permission for the opening of the grave at the cemetery. The funeral director may only reserve the funeral formally once the reopening document has been signed.
33. If a memorial or any other structure has to be removed for the purpose of a burial, the person applying for the burial or his/her duly authorised representative must remove the memorial or structure not less than twelve working hours before the burial is to take place. If the memorial or structure has not been removed within eight working hours before the burial is to take place, the burial must be postponed giving the cemetery staff ample time to prepare the grave.
34. If a grave needs to be made bigger, wider or deeper, the funeral director must notify the Deputy Director: Cemetery Services in writing of his/ her intension and of the proposed changes in measurements not less than eight working hours before the burial is to take place.
35. No person may bury a corpse in any grave other than in that allocated by the Deputy Director: Cemetery Services.

#### **DIMENSIONS OF GRAVE PLOTS AND GRAVES**

36. The dimensions of a grave plot for a deceased person of the age of nine years or older must be 2,500mm x 1,500mm, and the excavation for a single grave must be not less than 2,000mm deep, 2,200mm long and 750mm wide.
37. The dimensions of a grave plot for a deceased person under the age of nine years must be 1,500mm x 1,000mm, and the excavation for a single grave must be not less than 1,500mm deep, 1,200mm long and 750mm wide.
38. The Deputy Director: Cemetery Services must have all graves prepared, with the exception of brick-lined or concrete-lined graves in respect of which the brickwork or concrete work must be carried out by the funeral director in accordance with the specifications applicable to ordinary graves.

#### **BURIAL OF HUMAN REMAINS**

39. The Deputy Director: Cemetery Services may in special circumstances grant permission for the burial of two or three corpses in one grave, provided that the lid of the last coffin placed in the grave is at least 1,000mm below the natural surface of the ground.
40. No person may, without first obtaining permission in writing from the Deputy Director: Cemetery Services conduct a religious ceremony or service according to the rights of a religious denomination in a portion of a cemetery which is reserved by the Municipality for use by another religious denomination.
41. No person may cause any vehicle, including a hearse, to leave the roads while inside the cemetery. A hearse must leave the cemetery as soon as possible after the funeral for which it was engaged.
42. Any person taking part in a funeral procession or ceremony must comply with the directions of the Deputy Director: Cemetery Services in respect of the route to be taken inside the cemetery.
43. Only a memorial may be placed on a grave plot. The Municipality may remove any other object placed on such a grave plot. No boulders and no stacked stones will be allowed.

#### **FUNERALS FOR DESTITUTE PEOPLE**

44. The removal and burial of the corpse of a destitute person who has died within the area of jurisdiction of the Municipality is the responsibility of the Municipality if -
  - (a) the destitute person's corpse has not been claimed by a competent person; or
  - (b) a competent person has undertaken to bury the corpse of the destitute person but has not done so.
45. In terms of Section 48(2A) (a) of the Health Act, (No. 63 of 1997), the Municipality may, subject to applicable legislation, as it deems fit, cremate the corpse of a destitute person instead of burying the corpse.
46. Permission for the burial or cremation of the corpse of a destitute person must be obtained from the Deputy Director: Cemetery Services.

48. In the case of the burial of the corpse of a destitute person, the Municipality remains the reservation certificate holder.
49. In the case of the cremation of the corpse of a destitute person, the Municipality must bury the ashes in an area specifically set aside for that purpose.
50. A person applying for the burial or cremation of the corpse of a destitute person must -
  - (a) make an affidavit from the South African Police Services (SAPS) and have a letter from the relevant Ward Councillor to the effect proof that –
    - (i) the applicant cannot afford the expenses to pay for the burial or cremation; and
    - (ii) the deceased destitute person left no money or policy to pay for the funeral or cremation; and
  - (b) submit the affidavit and a signed letter from the relevant Ward Councillor, which must be to the satisfaction of the Deputy Director: Cemetery Services, to the Municipality
51. The Municipality reserves the right to refuse to bury or cremate the corpse of a destitute person if the requirements set out in Section 50 are not adhered to.

#### **EXHUMATION OF HUMAN REMAINS**

52. Human remains may be exhumed only if –
  - (a) the Premier of Gauteng, the Attorney General or a Magistrate and the reservation certificate holder authorise the exhumation in writing;
  - (b) the authorisation contemplated in paragraph(a) is handed to the Deputy Director: Cemetery Services in advance;
  - (c) the family of the deceased person or the funeral director notifies the Deputy Director: Cemetery Services representative or the Functional Head not less than three working days in advance of the date and time proposed for the exhumation;
  - (d) the Deputy Director: Cemetery Services is present at the exhumation; and
  - (e) at least one member of the South African Police Service, who must be notified by the family of the deceased person or the funeral director, is present at the exhumation.
53. The Deputy Director: Cemetery Services may require that a screen be erected around the area where the exhumation is to be conducted so that members of the public cannot view the exhumation.
54. The Municipality or the Municipality's contractor may open a grave up to the coffin, being the reopening level, but may not remove the human remains.
55. Only members of the family of a deceased person are permitted at the exhumation of the remains of that deceased person. If members of an organisation wish to attend an exhumation, the organisation must obtain permission from the Deputy Director: Cemetery Services in writing at least three working days before the proposed exhumation, failing which the members may be refused access to the exhumation.
56. All exhumations must, if possible, start before 09:00 or as soon as possible after 09:00 at a time that the Deputy Director: Cemetery Services may at his/her discretion allow.
57. All persons present at an exhumation must obey the instructions of the Deputy Director: Cemetery Services and the member of the South African Police Service.
58. If an exhumation takes place to remove a corpse from a grave, the reservation certificate holder retains his or her rights in respect of the grave if the corpse is to be returned to that grave. If the corpse is not to be returned to the same grave, the reservation certificate holder relinquishes his or her rights in respect of that grave, and the grave may be used again as the Deputy Director: Cemetery Services deems it fit to do so.

#### **WORK IN CONNECTION WITH MEMORIALS**

59. No person may bring any materials or cause any materials to be brought into a cemetery for the purpose of carrying out work in connection with memorials or for the purpose of carrying out any brickwork or stonework in any grave, and no person may erect any memorial, or carry out any construction of any kind on any grave unless and until the following requirements have been adhered to -

- (a) The person who applies for the work or construction must in every respect accept full liability for the memorial;
  - (b) The proposed work or construction must be approved by Deputy Director: Cemetery Services. The following documentation in respect of the proposed work or construction must be handed to the Deputy Director: Cemetery Services in duplicate not less than three working days before it is proposed that the materials be brought into the cemetery:
    - (i) A plan indicating the dimensions and the position of the proposed work;
    - (ii) a specification of the materials to be used; and
    - (iii) a document setting out the proposed inscription or ornamentation including the grave number.
  - (3) Only an original of the plan referred to in subsection (2) is acceptable. A photocopy or emailed copy of a plan may be accepted in the interim period, but the original must be submitted when the memorial is erected; and
  - (4) The written approval of the Deputy Director: Cemetery Services must be handed to the person who applied for the work or construction or his or her duly authorised representative.
60. The graves of people who fell in conflict, which graves are cared for or maintained by the Commonwealth War Graves Commission in terms of the Commonwealth War Graves Act, 1992 (Act No. 8 of 1992), or the South African Heritage Resources Agency in terms of the National Heritage Resources Act, 1999 (Act No. 25 of 1999), or by any other recognised body, or by any foreign government, may, on application being made to the Municipality, be exempted from the requirements of Section 59, but exemption from the payment of the grave fees determined by the Municipality from time to time is not granted.
61. The Deputy Director: Cemetery Services may refuse to grant permission for proposed work in respect of a memorial if the documentation referred to in Section 59 reveals that –
- (a) the work or the memorial will be of such an inferior quality that the work or the memorial is likely to cause damage, pose a danger, or in some way disfigure the cemetery; or
  - (b) the memorial will bear an inscription that is likely to cause offence to users of the cemetery or visitors to the cemetery.
62. No person may convey stones, bricks or monuments or any part of any stone, brick or monument in any cemetery on a vehicle or truck which –
- (a) is not fitted with wheels that have pneumatic tyres; and
  - (b) is of a kind that is likely to cause damage to the paths and grounds of the cemetery.
63. No person who is carrying out any work in respect of a memorial may –
- (a) at any time disturb an adjacent grave plot; or
  - (b) on completing the work, leave the grave plot until it is in a clean and tidy condition.
64. All work in connection with memorials that is carried out in a cemetery must be completed in accordance with the condition and specification, as approved by the Deputy Director: Cemetery Services under Section 59.
65. The monumental mason and monumental constructor must report to the cemetery office to verify that all the information with regard to the number and location of the grave is correct. Only information given in writing by the cemetery official will be accepted for this purpose.
66. Memorials in the monumental section of a cemetery must meet the following requirements:
- (a) Full kerbing must be constructed at the grave plot. A grave plot may not have a headstone on its own;
  - (b) All separate parts of a memorial, apart from the brickwork, must be affixed with copper or galvanised iron pins that are of a length and thickness sufficient to ensure the permanent stability of the work;
  - (c) Any part of a memorial that rests on a stone or other foundation must be completely squared and jointed;
  - (d) The undersides and the base of a memorial or headstone must be set at least 50mm below the natural level of the ground;
  - (e) All headstones must be securely attached to the base;

- (f) On every grave plot, the memorial in its entirety must be made of granite, marble or another material that bears an SABS certificate which specifies that the material will not erode or become discoloured for at least 30 years. The SABS certificate must be submitted to the Deputy Director: Cemetery Services before the memorial is erected;
  - (g) All memorials on all grave plots must be erected on concrete foundations that are at least 610mm wide and 205mm deep across the full width;
  - (h) All memorials on grave plots larger than single grave plots must be made of granite or marble and must be fixed to solid concrete mats at the four corners and where joints occur;
  - (i) The width of a memorial on a grave plot must be at least 100mm;
  - (j) The Deputy Director: Cemetery Services may require that a concrete foundation on a grave plot be reinforced if, in the interests of safety, reinforcement is necessary owing to the weight of the memorial.
67. No person may erect a memorial in a cemetery unless the number and section letters of the grave plot on which the memorial is to be erected are indelibly engraved on the memorial. The number and section letters must be engraved in such a position that the number and letters are legible at all times from the pathway. With the consent of the person who has applied for the memorial to be erected, only the name of the maker of the memorial may be placed on the foot stone. The figures and letters may not exceed a height of 50mm.
68. No person may do any work in connection with the erection of a memorial in a cemetery from 14:00 on a Friday until 07:30 on the following Monday. The Deputy Director: Cemetery Services may, in consultation with the cemetery officials, in exceptional cases allow such work to be carried out on a Saturday.
69. While in the cemetery, vehicles of monumental masons may under no circumstances leave the roads of a cemetery.
70. Even after approval for the erection of a memorial has been granted to a particular firm, the person who applied for the erection of the memorial may use any other firm of his or her choice for the erection of the memorial as approved.
71. Any person carrying out work in a cemetery must comply in every respect with the instruction or instructions of the Deputy Director: Cemetery Services.
72. Every monumental mason must, when erecting a memorial, put up land surveyor lines in line with the other memorials, from North to South and from East to West, so as to ensure that the memorials are erected in straight lines and in line with the existing grave layout.
73. A monumental mason must remove all excess soil and waste from the cemetery and leave the grave plot in a clean and tidy condition.
74. A memorial in a cemetery may not be higher than 1,200mm. If a special request is made to the Director: Cemetery Services and the written permission is obtained, a memorial may be higher than 1,200mm, but not higher than 1 800mm. When a special request is acceded to, a fee as determined from time to time by the Municipality is payable.
75. When permission is granted for a memorial to be higher than 1,200mm, the person applying for the memorial must submit to the Municipality an Engineer's Certificate and an Indemnity Letter, as prescribed by the Municipality.
76. Sections 74 and 75 do not apply to the berm section of a cemetery. In the berm section, memorials may not be higher than 1,200mm.
77. Once a memorial has been erected, the monumental mason must inform the Deputy Director: Cemetery Services that the erection has been completed.

#### **GRAVE PLOTS FURNISHED WITH A BERM**

78. A grave plot furnished with a berm is, notwithstanding anything to the contrary contained in these by-laws, subject to the following conditions:
- (a) No kerbing may be constructed on the grave plot;
  - (b) Only grass may be planted in the areas between the memorials;
  - (c) The dimensions of the base of a memorial for a deceased person of the age of nine years or older must be from 800mm x 200mm x 200mm to 1,000mm x 200mm x 200mm;

- (d) The dimensions of the base of a memorial for a deceased person younger than nine years of age must be from 600mm x 150mm x 150mm to 750mm x 150mm x 150mm;
- (e) A memorial may have more than one vase for flowers, provided that one of these vases stand on the right-hand side on the base of the memorial; and
- (f) A memorial may not extend over the foot and must be at least 50mm from the front edge of the berm.

### MAINTENANCE OF GRAVES

79. Any memorial erected on a grave must at all times be maintained in good order and condition by the family of the deceased person. If a memorial is allowed to fall into a state of disrepair or to constitute a danger or to disfigure the cemetery, the Municipality may, by means of a written notice to the reservation certificate holder, require the reservation certificate holder to have the required repairs carried out. The written notice must be sent by registered mail to the reservation certificate holder at the address given in the register or at any other address that the reservation certificate holder may have given the Deputy Director: Cemeteries in writing. If the reservation certificate holder fails to have the required repairs carried out within one month of the date of the notice, the reservation certificate holder is guilty of contravening these by-laws, in which case the Municipality may -
- (a) have the memorial removed as it deems fit; and
  - (b) recover from the reservation certificate holder or his or her successor the expenses incurred in removing a memorial.
80. A memorial that has been dismantled for the purpose of a further interment must be re-erected or removed by the reservation certificate holder within two weeks of the date of the dismantling. If the reservation certificate holder fails to do so, he or she is guilty of contravening these by-laws, in which case the Municipality is entitled to -
- (a) remove the dismantled memorial from the cemetery without further notice to the reservation certificate holder; and
  - (b) recover from the reservation certificate holder the expenses incurred in removing the dismantled memorial.
81. The Municipality is not liable for -
- (a) any loss of or damage to a memorial or an article placed on a grave plot, irrespective of the time or cause of the loss or damage; and
  - (b) any compensation in respect of any memorial that has been repaired or removed.
82. No person may -
- (a) without first obtaining the written permission of the Deputy Director: Cemetery Services plant any tree, shrub, bush or any other plant in the area of a grave plot; and
  - (b) plant any tree, shrub, bush or plant on any portion of a grave plot other than that indicated by the Deputy Director: Cemetery Services.
83. No reservation certificate holder may allow any shrub, bush or plant to hang over or extend beyond the limits of a grave plot.
84. The Municipality has the right to remove, trim or prune any plants which extend beyond the limits of the grave plot on which they are planted or any plants that are untidy.

### CHAPTER III

#### CREMATIONS

85. A cremation in the area of jurisdiction of the Municipality may only take place
- (a) under the supervision of the Deputy Director: Crematoria appointed for the Municipality;
  - (b) on payment of the fees determined from time to time in the tariff structure of the Municipality; and
  - (c) in a registered and complaint crematorium.
86. A cremation must be reserved with the Deputy Director: Cemetery Services not later than 1300hrs on the day before the day on which the cremation is to take place.
87. The Deputy Director: Cemetery Services may at his or her discretion refuse to allow a cremation if the requirements of these by-laws are not complied with.

88. In connection with any cremation, a member of a religious denomination may conduct a funeral service in the crematorium chapel, provided that the duration of the funeral service does not exceed one (1) hour. If the organ is used during the funeral service, it may only be played by an organist.
89. Services in the crematorium chapel may only be held from Mondays to Fridays between 09:00 and 13:30. With the special permission of the Deputy Director: Crematoria, services may be held on Saturdays and on Sundays.
90. In the case of private cremations without a service in the crematorium chapel, the corpses must be delivered to the crematorium from Mondays to Fridays between 08:00 and 10:00.
91. A funeral/ ash urn for receiving the ashes must be supplied with each corpse presented for cremation.
92. If a cremation service is reserved but the required documents prescribed in Sections 95 cannot be presented on time, the hearse may park in front of the crematorium chapel without the corpse being removed from the hearse. After the funeral service, the undertaker must take the corpse back and present it for a private cremation at a later stage.
93. Where a cremation is desired, one of the following persons must give notice of the cremation by completing the prescribed form, having the form affirmed or sworn to and submitting the form, together with the other prescribed documents, to the office of the Deputy Director: Cemetery Services:
- (a) The nearest surviving relative of the deceased person; or
  - (b) the executor of the estate of the deceased person, if there is no surviving relative, or another person who can provide a satisfactory reason for completing the form and documents and handing them in.
94. No person may –
- (a) wilfully conceal the fact that a deceased person has left directions that he or she should not be cremated;
  - (b) wilfully conceal any other material fact; or
  - (c) wilfully make any false statement.
95. Every notice submitted to the Deputy Director: Crematoria in terms of section 94 must be accompanied by –
- (1) the following documents in the case of a natural death:
    - (a) Schedule A - Application for cremation;
    - (b) Schedule B - Certificate of Medical Attendant;
    - (c) Schedule C - Confirmatory medical certificate;
    - (d) Schedule E - Authority to cremate; and
    - (e) Burial Order;
  - (2) the following documents in the case of an unnatural death:
    - (a) Schedule A - Application for cremation;
    - (b) Schedule D - Certificate after post-mortem examination;
    - (c) Schedule E - Authority to cremate; and
    - (d) Burial Order; or
  - (3) the following documents if the corpse of the deceased person was handed over in terms of the Human Tissue Act, 1983 (Act No. 65 of 1983), to an authorised person or institution:
    - (a) Schedule A - Application for cremation;
    - (b) Burial Order; and
    - (c) a covering letter from the medical referee.
96. All cremations are subject to approval by a medical referee appointed by the Premier of Gauteng.

97. The coffin in which a corpse is presented for cremation must –
- (a) be made of natural, combustible material (such as wood);
  - (b) contain no metal nails;
  - (c) have a bottom with no projections;
  - (d) be perfectly smooth; and
  - (e) contain no pitch, sawdust or glass.
98. If a coffin is fitted with handles that are made of synthetic material, the handles and the breastplate must be removed from the coffin and handed to the next of kin of the deceased person. If the handles and breastplate are not claimed by the next of kin, the Municipality may dispose of the handles and breastplate as it deems fit.
99. Where a metal case is necessary in a coffin, only a thin zinc lining may be used.
100. If a service in the crematorium chapel is desired, the authorised representative of the deceased person must provide bearers to carry the coffin into the chapel and deposit it on the catafalque.
101. The viewing of a corpse may under no circumstances be permitted on the cemetery premises or on the crematorium premises.
102. All persons present in a Crematorium are subject to the orders and control of the Deputy Director: Cemetery Services. The Deputy Director: Crematoria has the authority to –
- (a) exclude any person from the crematorium if that person's presence, in the opinion of the Deputy Director: Cemetery Services, is likely to cause pain or annoyance to other persons attending the cremation; and
  - (b) have any person removed from the Crematorium if that person refuses to comply with any order or instruction given by the Deputy Director: Cemetery Services in the course of the performance of his or her duties.
103. A corpse may not be removed from a coffin for the purpose of incineration. No coffin may be opened in the Crematorium, except if the Deputy Director: Cemetery Services has authorised its opening.
104. No person except authorised officials may be in the furnace chamber at any time without the special permission of the Deputy Director: Cemetery Services.
105. The ashes of a cremated corpse must be handed over to the next of kin of the deceased person or to the authorised representative of the next of kin on the first working day after the cremation took place.
106. No ashes may be scattered on any premises of the Municipality.

#### **DUTIES OF THE DEPUTY DIRECTOR: CREMATORIA**

107. The Deputy Director: Cemetery Services must -
- (1) keep a register which reflects the information in respect of every interment by cremation performed in each crematorium under his or her control; and
  - (2) make the entries for all cremations immediately after the cremations, with the exception of those entries which cannot be made immediately and can only be made after the ashes of the deceased persons have been -
    - (a) handed to the person who signed the required notice or to his or her duly authorised representative; and
    - (b) otherwise disposed of.

#### **POST-CREMATION SERVICES**

108. The conditions in respect of burials and exhumations apply *mutatis mutandis* to the burial and exhumation of ashes.
109. For the purpose of the burial of ashes in the ground, a garden of remembrance for ashes is laid out and is furnished with a berm with grave plots of 600mm x 600mm.
110. The ashes of no more than two deceased persons may be buried in a grave referred to in section 109.

111. The ashes of a deceased person may, on payment of the prescribed fees -
- (a) be placed in the wall of the columbarium or wall of remembrance;
  - (b) be buried in a grave in the cemetery; or
  - (c) be buried in the garden of remembrance for ashes.
112. If a person applies for the reservation of a niche in the columbarium, wall of remembrance or a plot in the garden of remembrance for ashes, the applicant must be in possession of ashes which must be placed in the niche or plot within three months of the date of the reservation. If the applicant fails to comply with this section, the niche or ash plot may be forfeited.
113. In the case of niches in the columbarium, wall of remembrance and plots in the garden of remembrance, the erection of a memorial must take place at the same time as the placing of the ashes.
114. A funeral/ ash urn which has to be placed in a niche in the columbarium, wall of remembrance or in a plot in the garden of remembrance must be made of terracotta or ceramic, porcelain, marble, glass, crystal, stone, granite, wood, resin, leather, bronze, brass, stainless steel. The size and design of a funeral/ ash urn are subject to the approval of the Deputy Director: Cemetery Services.
115. If a funeral/ash urn, as contemplated in section 114, is removed from a niche in the columbarium, wall of remembrance or plot in the garden of remembrance, the person in whose name the niche or plot is reserved forfeits all rights in respect of the niche or plot, and the Deputy Director: Cemetery Services may re-use the niche or plot as he/she deems fit.

#### MEMORIAL WORK FOR CREMATORIA

116. A memorial plaque placed on the wall of the columbarium or wall of remembrance must be made of granite or marble and must have a recess of 7mm on the front edge.
117. The dimensions of memorial plaques contemplated in section 116 must be as follows:
- (a) For half a space on the wall, the dimensions of the memorial plaque must be 240mm x 170mm.
  - (b) For three-quarters of a space on the wall, the dimensions of the memorial plaque must be 240mm x 260mm.
  - (c) For a full space on the wall, the dimensions of the memorial plaque must be 240mm x 330mm.
118. A memorial in a garden of remembrance must be erected during the placing of the ashes in the garden of remembrance. Memorials in a garden of remembrance must -
- (a) be manufactured from granite or marble;
  - (b) be uniform;
  - (c) have a base of 550mm x 150mm x 150mm and a headstone of 350mm x 350mm with a thickness from 80mm to 100mm; and
  - (d) have an opening in the base in which a vase for flowers can be placed.
119. A memorial must be erected at least 50mm from the front edge of the berm.
120. A small vase for flowers may be mounted on the right-hand side of the memorial plaque on the memorial wall of the columbarium or wall of remembrance. Vases for flowers must be uniform and are subject to the approval of the Deputy Director: Cemetery Services.

#### CHAPTER IV

#### GENERAL PROVISIONS

#### PERSONS WHO HAVE DIED OUTSIDE THE AREA OF JURISDICTION OF THE MUNICIPALITY

121. The provisions of these by-laws apply *mutatis mutandis* to any interment, whether by burial or cremation, within the area of jurisdiction of the Municipality of the human remains of any person who has died outside the area of jurisdiction of the Municipality, subject to the condition that a burial order in terms of Section 20(3) of the Births and Deaths Registration Act, 1992 (Act No 51 of 1992), is handed to the Deputy Director: Cemetery Services.

**GENERAL**

122. Every application and every document relating to any interment, whether by burial or cremation, must be -
- (a) furnished with a number from the register;
  - (b) filed in sequence; and
  - (c) preserved by the Municipality for a period of at least ten years.
123. All fees in respect of interments, whether by burial or cremation, must be set out as in the Municipality's tariff structure.

**OFFENCES AND PENALTIES**

- 124 (1) Any person who contravenes or fails to comply with any of the provisions of or direction issued or requirement imposed under this by-law or contravenes or fails to comply with any provision of this by-law is guilty of an offence.
- (2) Any person convicted of an offence under this by-law is liable to a maximum period of imprisonment of three years or R60 000 or both as may be determined by a Court of Law in accordance with the Adjustment of Fines Act, 1991 (Act No 101 of 1991), or to both imprisonment and the fine.
- (3) In the case of a continuing offence, a further fine of R3 000.00 or, in default of payment of the fine, to imprisonment for a period of six months for each day that the offence continued.
125. The Municipality is indemnified against any loss, damage or claim of whatever nature, including legal costs, owing to a negligent act or omission of the Municipal officials or agents.

**CHAPTER V****REPEAL OF EXISTING BY-LAWS**

126. All previous By-laws related to Cemeteries and Crematoria of the Municipality are hereby repealed.
127. Short title and commencement
- These by-laws shall be called the Cemeteries and Crematoria By-Laws, 2020 and shall come into operation on **2 January 2021**.