

MIDVAAL CEMETERY AND CREMATORIA BY-LAWS

The Midvaal Local Municipality hereby publishes the Cemetery and Crematoria By-laws set forth hereinafter, which have been promulgated by the municipality in terms of section 156(2) of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) and in accordance with section 13(a) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000).

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CHAPTER I: INTERPRETATION

1. Definitions

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

“**active cemetery**” means a Public Cemetery situated within the jurisdiction of the municipality, and includes the buildings and fixtures within the cemeteries;

“**adult**” (where the word is used to describe a body) means any deceased person over the age of 12 years;

“**aesthetic (also called Lawn) section**” means a section of a cemetery, which has been set aside by the municipality in which only a headstone may be erected on a berm and in which the municipality must provide and maintain a strip of lawn;

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

“**berm**” means a concrete strip laid by the municipality along a row of graves, or between two such rows, in the aesthetic section;

“**body**” means any dead human body including the body of a still-born child;

“**burial order**” means an order issued by a person authorised to do so in terms of the Births and Deaths Registration Act, 1992 (Act 51 of 1992);

“**burial place**” means any burial-ground whether public or private, or any place whatsoever in which one or more bodies is or are buried, interred, cremated or otherwise disposed of, or intended to be buried, interred, cremated, or otherwise disposed of;

“**caretaker**” means the person appointed from time to time by the municipality in a supervisory capacity with regard to any cemetery in accordance with section 0 of these by-laws;

“**cemetery**” means any piece of land for the burial or interment of a body and, except for Chapter 3 of these by-laws, refers only to public cemeteries;

“**cemetery services**” means the management, administration, operation and maintenance of an active cemetery;

“**child**” means any deceased person of the age of 12 years or under whose coffin will fit into the grave opening prescribed for children in section 25;

“**commonwealth war burial**” means a burial of any member of the naval, military or air forces of the Commonwealth who died as a result of injuries sustained or illnesses contracted in the course of active duty during the First World War (1914 to 1921) or the Second World War (1939 to 1947);

“**commonwealth war grave**” means any grave, tombstone, monument or memorial connected with a Commonwealth war burial;

“**customer**” means the person who has paid or caused any of the charges determined from time to time by the municipality to be paid or who has obtained the right to have any memorial work erected or constructed or who has obtained any other rights or interests referred to or mentioned in these by-laws;

“**cremation**” means the practice of disposing of a human body by fire and thereby reducing any human remains to ashes;

“**crematorium**” means a crematorium as defined in section 1 of the Crematorium Ordinance, 1965 (Transvaal Ordinance 18 of 1965) which includes the buildings in which the ceremony is conducted and the cremation carried out;

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

“**exhumation**” means the disinterment of a body from its interment site;

“**full capacity**” means that all existing space for interment has been used so that it is no longer reasonably practicable, whether for economic, aesthetic, physical or any other good reason of whatsoever nature, for the municipality to determine, to set out further new grave sites;

“**garden of remembrance**” means a section of a cemetery or crematorium set aside for the erection of memorial work to commemorate a deceased person whose body was cremated;

“**grave**” means any piece of land laid out for the interment of one or more bodies within any cemetery;

“**grave of a victim of conflict**” means grave of a victim of conflict as defined in section 2 of the National Heritage Resources Act, 1999 (Act 25 of 1999);

“**Health Act**” means the Health Act, 1977 (Act 63 of 1977);

“**indigent person**” means a person who has been identified as indigent at the time of his death in terms of the Memorandum of Agreement between Midvaal Local Municipality and Lekoa Cemeteries; the burial of such a person to be conducted at a reduced tariff, annually revised in terms of Section 11 of these by-laws.

“**inhumation**” means the burial of human remains;

“**interment**” means burial in earth or in any form of sepulchre and includes the cremation of a body;

“**local community**” means the body of persons comprising –

the residents of the municipality;

the ratepayers of the municipality;

any civic organisations or non-governmental organisations which are involved in local affairs within the municipality; and visitors and other people residing outside the municipality who, because of their presence in the municipality, make use of the services provided by the municipality, including any person or persons who would, if he or she were ordinarily resident in the municipality, qualify as an indigent person;

“medical officer of health” means the medical officer of health of the municipality appointed in terms of section 22 of the Health Act, or any person appointed to assist him in terms of section 24 of the Health Act, authorised by the medical officer of health and acting under his supervision;

“memorial wall” means a wall containing niches provided for the placement of ashes and inscribed plaques in a garden of remembrance;

“memorial work” means any tombstone, railing, fence, monument, memorial, inscription or other work erected or which may be erected on or about any grave;

“monumental section” means a section of a cemetery, which has been set aside by the municipality wherein memorial work may be erected to cover the entire grave area;

“municipal manager” means the municipal manager as defined in section 82(1)(a) of the Structures Act;

“municipality” means-

(a) the Midvaal Local Municipality, a category B municipality in the district of Sedibeng, Gauteng, established in terms of section 12(1) of the Structures Act; or

(b) a service provider fulfilling a responsibility under these By-laws, assigned to it in terms of section 81(2) of the Systems Act, or any other law;

“new cemetery” means a public cemetery which is developed or set aside for development by the municipality and which is or may become an active cemetery as contemplated in section 2(1) of these by-laws;

“niche” means a recessed compartment in a memorial wall for the interment of ashes;

“passive cemetery” means a public cemetery owned, regulated, established or maintained by, or the control of which is vested in, the municipality, and which is certified as a “passive cemetery” in terms of section 0 of these by-laws;

“pauper” means a person who has died as an unknown person;

“private cemetery” means any cemetery which is not a public cemetery;

“private grave” means any piece of ground that has been laid out for a grave within any cemetery and in respect of which an exclusive right of use has been purchased in terms of section 22 of these by-laws;

“public cemetery” means any cemetery which is owned, regulated, established or maintained by, or the control of which is legally vested in, the municipality;

“registrar of deaths” means a person appointed by the Government to register deaths;

“resident” means a person who, at the time of death, ordinarily resides in the boundaries of the municipality;

“sepulchre” means a tomb;

“SANS” means the South African National Standards Codes of Practice or the South African Bureau of Standards Codes of Practice as contemplated in Government Notice No. 1373 published in Government Gazette 24002, dated 8 November 2002 in terms of the Standards Act, 1993 (Act 29 of 1993);

“service area” means the area of jurisdiction of the municipality;

“service delivery agreement” means an agreement between the municipality and a service provider in terms of which the service provider is required to provide cemetery services;

“service provider” means any person who has entered into a service delivery agreement with the municipality in terms of section 81(2) of the Systems Act;

“still-born child” means a human foetus that has had at least 26 weeks of intra-uterine existence but showed no sign of life after complete birth;

“Structures Act” means the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

“Systems Act” means the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);

“tariff” means the tariff promulgated by the municipality and collected from the customer by the municipality for rendering cemetery services; and

“undertaker” means a person registered to undertake the preparation of a human body for burial or cremation in terms of the Health Act.

CHAPTER II: ESTABLISHMENT OF PUBLIC CEMETERIES

2. Establishment of Cemeteries

- (1) The municipality may from time to time set aside, acquire or develop any ground for the purpose of establishing a cemetery.
- (2) The municipality must at all times ensure that sufficient burial space is available for the burial of bodies within the service area.
- (3) The municipality is responsible for the on-going maintenance of all cemeteries, including any damage to the cemetery, but not to any memorial work, caused by Acts of God.
- (4) The cemetery services may, from time to time, be suspended at a particular cemetery for the purposes of undertaking maintenance, including extraordinary maintenance: Provided that adequate notice be given to members of the public; Provided further that, if the municipality has other active cemeteries of the same category (if the municipality has classified the active cemeteries in its service area into different categories in terms of section 0, there is another active cemetery of the same category available to the public within the service area.

3. Caretakers

- (1) The municipality must appoint a caretaker to every cemetery to control the day-to-day management of the cemetery.
- (2) The caretaker may be a caretaker for more than one cemetery.

4. Classification of Cemeteries

- (1) The municipality may classify active cemeteries into different categories for the purposes of establishing different service levels.
- (2) The classification must be undertaken in such a manner that the cemeteries are classified for the purposes of price differentiation in order to ensure affordability: Provided that such differentiation does not amount to unfair discrimination.

5. Passive Cemeteries

- (1) Once a cemetery is full and can no longer be used as an active cemetery, the municipality must declare, through the issuing of a certificate, that cemetery to be a passive cemetery.

- (2) The municipality may declare sections of a cemetery which are full to be closed, pending the use of the remaining sections of the cemetery. Once the entire cemetery is full, the municipality must declare the cemetery to be a passive cemetery in accordance with subsection 0.
- (3) The municipality is responsible for the on-going maintenance of all passive cemeteries.

CHAPTER III: PRIVATE CEMETERIES

6. Registration of Existing Graves

Any owner of land, other than the municipality, upon whose land any grave or graves exist, must inform the municipality of the existence of such graves on a form to be prescribed by the municipality.

7. Establishment and Continued Use of Private Cemeteries

No person shall, within the service area, establish a private cemetery and no owner of any private cemetery already in existence shall, if the use of such cemetery was not previously authorised by the municipality, continue to use such existing cemetery for burial purposes without the municipality's authority being obtained in terms of section 8.

8. Application for a Private Cemetery

- (1) Applications for the municipality's approval to continue using a private cemetery shall be made in writing to the municipal manager. The application must include:
 - (a) A locality plan to a scale of not less than 1:10 000, showing the position of the existing cemetery in relation to the boundaries of the land upon which it is situated, the registered description of the site and showing all streets, public places and privately-owned property within a distance of 100 metres of the site;
 - (b) A block plan to a scale of at least 1 in 500 showing the position of external boundaries, internal roads and paths, sub-divisions, grave sites, drainage and any buildings existing or proposed to be erected;
 - (c) A plan and sections to a scale of at least 1 in 100 of any building existing or proposed to be erected, and which shall in the latter case conform with the building and sewage by-laws of the municipality;
 - (d) A list of registers or records kept or proposed to be kept with reference to identification of graves, sale or transfer of grave sites and interments;
 - (e) The full names and addresses of the owner and the caretaker;
 - (f) The nature of the title under which the owner of the private cemetery will hold or holds the land on which the cemetery is to be established or which is being used as a cemetery, and whether such land is subject to any encumbrance in any way;
 - (g) Proof, to the satisfaction of the municipality, that the owner has adequate insurance and real security to be able to discharge the obligation of maintaining the private cemetery and all graves in the future; and
 - (h) A schedule of burial fees proposed to be charged or currently being charged.
- (2) On receipt of the application referred to in subsection (1), the municipal manager must inform the applicant that he must place within one or more newspapers, circulating within the municipality, a notice stating the nature of the application and specifying the date by which objections to the granting of the application must be lodged with the municipal manager: Provided that the period in which objections must be lodged may not be less than 14 days.
- (3) Within 60 days of the final date for the lodging of objections, the municipal manager must submit the application to the municipality for consideration by the municipality.
- (4) Within 30 days of the municipality's receiving the application in terms of subsection (3), the municipality must consider the application and any objections to the application which may have been lodged. If, after consideration of the application and any objections, the municipality is satisfied that no interference with any public amenity, or nuisance or danger to the public health is likely to take place or arise as a result, the municipality may authorise, in writing, the continued use of the private cemetery, in accordance with the document submitted to the municipality in terms of subsection (1).
- (5) If approval is granted for the continued use of a private cemetery in terms of subsection (4), then there may be no departure from the plans submitted in terms of subsection (1) without the approval of municipality in writing.

9. Duties of the Owner of a Private Cemetery

Every owner of a private cemetery which has been authorised in terms of section 8(4) to continue a private cemetery shall -

- (a) Maintain a burial register in accordance with section 21 of the Births and Deaths Registration Act, 1992 (Act 51 of 1992);
- (b) Maintain a duplicate copy of the burial register referred to in subsection 0 at a place other than the place where the burial register referred to in subsection 0 is kept;
- (c) Keep a record or records showing -
 - (i) the number of each grave site and the ownership of the ground in which the grave is situated; and
 - (ii) the number of interments in each and every grave site and the name, age, sex, race, last known address, date and cause of death of each person interred in it;
- (d) Comply with the provisions of Chapter 3 and any other relevant provisions of the Births and Deaths Registration Act, 1992 (Act 51 of 1992);
- (e) Maintain all grounds, fences, gates roads, paths and drains in good order and condition and clear of weeds and overgrowth and provide adequate potable and ablution facilities;
- (f) Provide for the identification of grave sites by subdividing the cemetery into blocks each containing a number of graves or grave sites and each block being demarcated by means of signs showing the number and situation of each block. Every grave site in each block must be separately numbered by means of durable number plates. All signs and number plates must be maintained in a neat and legible condition;

- (g) Allow the municipality or its duly authorised officers to enter and inspect the cemetery, the burial register, and all records kept in connection therewith;
- (h) Render a monthly report on all burials to the municipal manager on a date to be determined by the municipal manager, detailing the name, last known address, age, sex, race, date and cause of death in each case, and the name of the Medical Practitioner who issued the certificate of death, a copy of the burial order, the authority who issued the burial order, the block and grave site number, and the date of burial;
- (i) Render an annual return to the municipal manager on a date to be determined by the municipal manager, detailing the names and addresses of all trustees, committee members and persons controlling the private cemetery, if there be any;
- (j) Appoint a caretaker to manage the cemetery and keep the records thereof. Any new appointment or change in the identity of the caretaker should be reported to the municipal manager on the monthly report submitted to the municipal manager in terms of subsection 900; and
- (k) Comply with any other conditions prescribed by the municipality.

CHAPTER IV: SERVICE PROVIDERS

10. Agreement, Delegation and Customer Care Charter

- (1) Subject to subsection 0, the municipality may discharge all or some of its obligations under these by-laws for the rendering of cemetery services by entering into a service delivery agreement with a service provider or service providers in terms section 81(2) of the Systems Act.
- (2) Subject to the provisions of the Systems Act or any other law, the municipality may assign to a service provider any power enjoyed by the municipality under these by-laws: Provided that the assignment is necessary to enable the service provider to discharge any obligation under its service delivery agreement.
- (3) Any reference in these by-laws to "municipality or service provider" must be read as the "municipality" if the municipality has not entered into a service delivery agreement; and, if the municipality has entered into a service delivery agreement, must be read as "service provider".
- (4) Without derogating from the generality of the provisions of subsection 0, the municipality may not discharge an obligation to monitor and enforce the provisions of these by-laws by entering into an agreement with a service provider to do so.
- (5) A service provider established in terms of subsection 0 must prepare a customer care charter which shows how the service provider intends to deal with complaints and customer care.

11. Tariffs

- (1) Notwithstanding the provisions of section 0, the municipality retains the responsibility to establish maximum tariffs for cemetery services.
- (2) The municipality must evaluate and promulgate maximum tariffs annually, prior to 1 July of each year.

CHAPTER V: DISPOSAL OF A BODY

12. Disposal of a Body

- (1) No person may, save with the prior written permission of the municipality, dispose of or attempt to dispose of a body, other than:
 - (a) by interment in a private cemetery or a public cemetery established by the municipality in terms of section 2(1), and in accordance with the procedure set out in Chapter 7 of these by-laws; or
 - (b) by cremation in a crematorium as regulated by Chapter 12 of these by-laws.
- (2) No body intended for burial or cremation may be presented at a cemetery or crematorium unless being first enclosed in a sealed body bag or placed within a coffin, except where there is an objection thereto on religious grounds: Provided that, where there is an objection to a coffin or body bag on religious grounds, the body must be covered in a burial shroud or other suitable perishable material.

13. Funeral Undertakers

- (1) Subject to the provisions of sections 20, 33, 34 and 39 of the Health Act, no funeral undertaker shall enter into a contract to bury or cremate any body in any cemetery or crematorium under the control of the municipality unless—
 - (a) The funeral undertaker is in possession of a certificate of competence issued by the municipality in terms of the Health Act;
 - (b) The premises from which the funeral undertaker operates is zoned in accordance with planning for such a business; and
 - (c) All the requirements of a funeral undertaker and a funeral undertaker's premises in terms of the Health Act have been complied with.
- (2) The municipality may, after giving reasonable notice to an undertaker of its intention to conduct an inspection, enter into and inspect the undertakers premise to enable it to determine whether subsection 0 and 0 have been complied with.
- (3) All undertakers must keep records of all bodies which they receive and of the burial orders for these bodies.
- (4) Any caretaker may refuse to bury a body presented for burial by an undertaker who has not complied with these by-laws; Provided that where a caretaker refuses such a burial, this is reported in writing to the municipality along with the reasons for refusal.

14. Register

- (1) The caretaker of a cemetery must maintain a burial register in accordance with section 21 of the Births and Deaths Registrations Act, 1992 (Act 51 of 1992).

- (2) The caretaker must maintain a duplicate copy of the burial register referred to in subsection 0 at a place other than the place where the burial register referred to in subsection 0 is kept.

CHAPTER VI: FUNERALS

15. Religious Ceremonies

- (1) The members of any religious denomination may conduct religious ceremonies in a cemetery in connection with any interment or memorial service subject to the control and by-laws of the municipality.
- (2) No person shall conduct any religious ceremony according to the rites of any denomination in such portion of any cemetery that is reserved by the municipality for members of another denomination.

16. Exposure of Corpses

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

17. Instructions of the Caretaker

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

18. Music and Singing

No music or singing will be allowed in a cemetery, except for sacred singing, and except in the case of police or military funerals, without the caretaker's permission.

19. Occupation of Chapel or Shelter

No person shall occupy any chapel or shelter in a cemetery for more than 45 minutes, unless authorised to do so by the caretaker of the cemetery.

20. Hours for Interments

- (1) Subject to the provisions of subsection 0, interments shall take place during the following hours:
- (a) On a Monday to Thursday, excluding public holidays, from 09:00 to 15:30; and
 - (b) On a Friday, excluding public holidays, from 09:00 to 14:00.
- (2) The caretaker may, upon payment of the prescribed charge, allow interments to take place after the hours referred to in subsection 0 on weekdays and also on Saturdays, Sundays and public holidays: Provided that, if the proceedings at the grave commence after the hours referred to in subsection 0, the charges will be payable as prescribed in the cemetery tariffs.

21. Numbering of Graves

- (1) Until such time as a memorial has been erected on a grave, the caretaker shall fix and maintain an identification plate on every grave plot in the cemetery.
- (2) No person shall inter a body in any grave which has not been allotted by the municipality.

CHAPTER VII: INTERMENTS

22. Application for Purchase and Use of a Grave

- (1) No person shall inter or cause to be interred any body within any cemetery without the permission of the caretaker. Such permission shall only be granted on submission to the caretaker of the original burial order authorising interment, together with notice of such interment.
- (a) A person wishing to have a body interred shall notify the caretaker on a form to be prescribed by the municipality not less than eight hours before the time arranged for such interment. Such application shall be signed by the nearest surviving relative of the person whose body is to be interred in the grave, or such other person as the nearest surviving relative may authorise to sign the application on his behalf: Provided that if the caretaker is satisfied that the signature of the nearest surviving relative cannot be obtained timeously, he may at his discretion grant an application signed by any other interested person.
- (2) The municipality may, at its discretion, sell to any person the use of any piece of ground for a grave. Any person wishing to purchase the use of any such grave shall apply to the municipality. Such grave shall be allotted by the municipality and held subject to the cemetery by-laws from time to time in force.
- (3) Not more than one interment may be made in a grave, except with the written permission of the caretaker.
- (4) Where there has been an interment in a grave and where a deeper grave is required for the interment of another coffin in the same grave at a later stage, application to inter another coffin must be made to the caretaker when notice of the first interment is given to the caretaker.
- (5) A second interment in the same grave will not be allowed within one year from the date of the first interment.
- (6) Not more than three coffins may be interred in the same grave.
- (7) The municipality may, upon application and in its sole discretion, inter any body free of charge in such place and manner as it may consider fit.

- (8) No body shall be interred unless it is placed in a coffin as described in section 29, unless there is an objection thereto on religious grounds in terms of section 0.

23. Permission to Inter

- (1) Subject to the provisions of subsection 0, the caretaker may not grant permission to inter a body where:
- (a) A burial order in terms of the Births and Deaths Registration Act, 1992 (Act 51 of 1992) has not been presented to the caretaker;
 - (b) All appropriate tariffs, as prescribed by the municipality, have not been paid; and
 - (c) An application in terms of section 0 has not been made.
- (2) In circumstances which, in the opinion of the caretaker, are exceptional, the caretaker may grant permission to inter a body where the requirements in subsection 0 and 0 have not been met.

24. Alteration of Date of Interment

Should any alteration be made in the day or hour previously fixed for an interment, notice of that alteration shall be given to the caretaker at the cemetery at least 6 hours before the time fixed for such interment.

25. Dimensions of Grave Openings

- (1) The dimensions of graves shall be as follows:
- (a) Graves for adults shall have at least the following dimensions:
 - (i) a length of 2 200 millimetres;
 - (ii) a width at the position of the shoulders of 900 millimetres;
 - (iii) a width at the position of the head of 600 millimetres;
 - (iv) a width at the position of the feet of 500 millimetres; and
 - (v) a depth of 1 900 millimetres.
 - (b) Graves for children shall have the following dimensions:
 - (i) a length of 1 400 millimetres;
 - (ii) a width at the position of the shoulders of 500 millimetres;
 - (iii) a width at the position of the head of 450 millimetres;
 - (iv) a width at the position of the feet of 330 millimetres; and
 - (v) a depth of 1 500 millimetres.
- (2) Where the interment of any body requires an aperture in excess of the standard dimensions, the notice of interment must specify the dimensions of the coffin and its fittings.
- (3) Upon the death of a person the nearest relative shall have the right, on payment of the charges determined from time to time by the municipality, to purchase one adjoining grave, if it be available, for future use.
- (4) Any person wishing to purchase the right to a grave shall apply to the municipality and pay the prescribed tariff.

26. Rights not Transferable

- (1) No person shall, without the consent of the municipality, sell or transfer to any other person any right relating to a grave or niche which he has obtained or may obtain in terms of the provisions of these by-laws.
- (2) Every transfer of the right to a purchased grave or niche shall be registered by the municipality and the transfer charge determined from time to time by the municipality shall be paid to the municipality by the new customer.
- (3) The municipality may purchase the right to an unused grave or niche if this is necessary for the efficient administration of the cemetery or for any reasonable environmental considerations: Provided that where the municipality does so, it must provide just compensation to the customer.
- (4) The right to a niche shall accrue to the municipality without any compensation when the ashes of a deceased are removed or when the commemorative plate is removed from the niche.

27. Children's Coffins Which Are Too Large For a Child's Grave

Should a child's coffin be too large for the dimensions of a child's grave, it will be placed in an adult's grave and the prescribed charge for an adult's grave shall be paid.

28. Covering with Earth

There shall be at least 1 200mm of earth between the top of any adult's coffin and the surface of the ground and at least 900 mm of earth between the top of a child's coffin and the surface of the ground.

29. Coffins in Graves

No person shall place in any grave, or cause to be placed in any grave, any coffin constructed from any material other than soft wood or other perishable material, without the written consent of the caretaker: Provided that any attachments to such a coffin which normally form part of a coffin, need not be made of soft wood or other perishable material.

30. Number of Bodies in One Coffin

- (1) Subject to the provisions of section 0 two or more bodies of members of the same family may be buried in the same coffin where –
- (a) Two members of a family die together, including two persons married to one another;
 - (b) A mother and child or children die during childbirth; or
 - (c) Two unmarried persons of the same or different sex who, at the time of their death, in the reasonable opinion of the customer, were involved in a committed relationship with one another, die at the same time.

- (2) Anatomy remains of two or more bodies may be buried in the same grave.
- (3) Notwithstanding the provisions of subsection 0 or 0, the customer will still be liable to pay the applicable tariff as prescribed in section 11.

31. Covering of the Coffin or Body with Earth

Every coffin or body bag shall, upon being placed in any grave be covered without delay with at least 300 millimetres of earth.

32. Disturbance of Human Remains

Subject to these by-laws, the provisions of an exhumation order given in terms of the Inquests Act, 1959 (Act 58 of 1959), section 46 of the Health Act, or any other provision of any law relating to the exhumation of bodies, no person shall disturb any mortal remains or any ground surrounding them in any cemetery.

33. Interment of Deceased Persons Resident Outside the Municipality

The municipality may in its discretion permit the interment of a deceased person who was resident outside the municipal area.

34. Pauper and Indigent Burials

- (1) The body of a pauper must be buried at the cost of the municipality at a cemetery to be determined by the municipality.
- (2) The body of an indigent person may be buried at a different tariff to be approved by the municipality in accordance with section 11 of these by-laws.

CHAPTER VIII: EXHUMATION OF BODIES AND RE-OPENING OF GRAVES

35. Opening of Graves

- (1) Subject to the provisions of the Removal of Graves and Dead Bodies Ordinance, 1925 (Ordinance 7 of 1925), and to any provisions of any other law pertaining to the exhumation of a corpse, no grave may be opened without the written consent of the following authorities—
 - (a) The Gauteng Department of Health; and
 - (b) The municipality.
- (2) In addition to the consent required in subsection 0, where a grave is older than 60 years and is situated outside a cemetery administered by the municipality, or constitutes a grave of a victim of conflict, the approval of the South African Heritage Resources Authority or the Provincial Heritage Resources Authority established for the province of Gauteng if there be one, is required through the issuing of a permit in terms of section 36(3) of the National Heritage Resources Act, 1999 (Act 25 of 1999).
- (3) No person may disinter, remove, reinter or cremate a body buried in a Commonwealth war grave, or otherwise interfere with a Commonwealth war grave or Commonwealth war burial other than in accordance with the Commonwealth War Graves Act, 1992 (Act 8 of 1992).

36. Exhumations

- (1) Subject to the provisions of sections 32, 35 and 39, no person shall exhume or cause any corpse to be exhumed or removed without the written consent of the municipality and the medical officer of health.
- (2) The charges for exhumation determined from time to time by the municipality shall in every case be paid before the exhumation takes place.
- (3) Such permission shall be submitted to the caretaker at least two days before the date fixed for the exhumation or removal of such corpse.

37. Screening of Activities

The undertaker shall effectively screen the grave from which any corpse is to be removed from view during the exhumation.

38. Persons to be Present During Exhumations

No exhumation or removal by any body shall take place unless the medical officer of health is present as well as a member of the South African Police Service.

39. Transfer of Buried Corpses

Should the transfer of a corpse be deemed expedient by the municipality at any time or should any provision of these by-laws be contravened during the interment of a corpse in any grave, the municipality may, after having complied with the provisions of the Removal of Graves and Dead Bodies Ordinance, 1925 and these by-laws, transfer such corpse to another grave. Where reasonably possible, a relative of such deceased person shall be notified accordingly.

CHAPTER IX: CARE OF GRAVES

40. Care of Graves

The customer in respect of any grave shall keep such grave clear of weeds and in proper order. Should the customer fail to do so, the municipality may itself do so or cause the necessary work for the abovementioned purpose to be done and to recover the cost thereof from the customer.

41. Shrubs and Flowers

- (a) No person, other than the caretaker, may plant any shrub, tree, plant or flower upon any grave in the cemetery;
- (b) No shrub, tree, plant or flower in the cemetery shall be cut or removed by any person without the consent of the caretaker; and
- (c) The caretaker shall have the right to prune, cut down, dig up or remove any shrub, tree, plant or flower in the cemetery at any time.

42. Care of Graves

The municipality may, in its discretion, undertake to keep any grave in order for any period against payment of the charges determined from time to time by the municipality.

CHAPTER X: ERECTION AND MAINTENANCE OF MEMORIAL WORK

43. Memorial Work

No person shall, unless the charges as determined from time to time by the municipality have been paid, and the consent in writing of the caretaker and of the customer for such grave has been obtained, bring any memorial work into a cemetery, or, after its having been brought into it, erect, alter, paint, renovate, remove or otherwise interfere with it, or cut any inscription thereon.

44. Waiting Period Before Erecting of Memorial

No memorial may be erected in the monumental section within six months after the date of interment, unless the caretaker, after consideration of written representations and subject to the conditions set out in 0, 0 and 0, grants approval thereto:

- (a) That sufficient provision was made for the stabilisation of the ground, and that any displacement of the memorial work will be rectified by the customer;
- (b) That the relatives indemnify the municipality against any claims arising as a result of damages caused to the memorial because of subsidence; and
- (c) That the erector of the memorial undertakes in writing to repair memorials, which were damaged because of subsidence.

45. Position of Memorial Work

No person shall erect any memorial work on any grave except in such position as the caretaker may direct or as otherwise provided for in these by-laws.

46. Repairs to Memorial Work

Should the customer of a grave allow any memorial work to fall into a state of disrepair that may, in the opinion of the caretaker, cause danger to any person or to any thing situated in the cemetery, or to deface or damage any cemetery, the caretaker may order him by notice in writing, to make such repairs as the caretaker may consider necessary. Should the address of the customer be unknown to the caretaker, such notice may be published in both official languages in any daily newspaper circulating within the municipality. Should the required repairs not be carried out within one month of serving such notice or the publication of it, the caretaker may himself carry out such repair or remove the memorial work without paying any compensation and may recover the cost of the repairs or of removal from the customer, or both.

47. Supervision of Work

Any person engaged upon any memorial work in a cemetery shall affect such work in accordance with the plan submitted and to the satisfaction of the caretaker.

48. Damaging of Memorial Work

- (1) Subject to the provisions of subsection 0, the municipality shall not be liable for any damage which may at any time occur to any memorial work.
- (2) The municipality shall be liable to the person to whom it has caused harm for damage caused by the wrongful and either intentional or grossly negligent acts of the municipality or any of its employees that causes damage to any memorial work.

49. Moving of Memorial Work

The caretaker may, after due notice to the customer, at any time, change or alter the position of any memorial work and recover the cost of doing so from the customer of such memorial work: Provided that in any case where any memorial work has originally been placed in a certain position with the consent of the caretaker, any alteration to that position shall be done at the expense of the municipality.

50. Bringing Material into Cemetery

No person shall bring into the cemetery any material for the purpose of constructing any memorial work on any grave, or to erect a commemorative plaque in the garden of remembrance, unless and until—

- (a) a sketch together with the essential dimensions in figures of the proposed memorial, and showing the position of the proposed work, accompanied by a specification of the materials to be used in addition to a copy of any proposed inscription has been submitted to the caretaker at least fourteen days prior to the date on which such material is intended to be brought into any cemetery;
- (b) all charges due in respect of such grave or graves or niches have been paid;
- (c) the caretaker's written approval of the proposed work has been given; and
- (d) the grave number has been engraved on the memorial work.

51. Approval and Removal of Memorial Work by the Caretaker

- (1) Subject to the right of an affected person to appeal to the municipality against any rejection by the caretaker, the caretaker may reject any proposed design or material for a memorial, which he considers to be unsuitable.
- (2) Any memorial which is not erected to the satisfaction of the caretaker must be rectified by the customer within one month after having been notified in writing by the caretaker to do so, or be removed by the customer and at the expense of the customer.
- (3) No Person shall remove or disturb any memorial within any cemetery without the permission of the caretaker.

52. Requirements for Erection of Memorial Work

- (1) Memorial work shall be in accordance with the following requirements:
 - (a) Where any part of any memorial work is to be joined to any other part, copper or galvanized iron pins of approved thickness and 160 millimetres long shall be used for such purpose. The holes, into which such pins must fit, shall be not less than 80 millimetres deep;

- (b) Any part of such work resting upon the ground or any stone or other foundation shall be fairly squared and bedded;
 - (c) No stone of uneven thickness, or having any corner wanting, shall be used unless shown on the sketch submitted in terms of section 0;
 - (d) The underside of each memorial shall be set at least 50 millimetres below the natural level of the ground and on an adequate concrete foundation;
 - (e) Without the written consent of the caretaker, no kerb stones shall be used which protrude more than 250 millimetres above the surface of the ground or are more than 200 millimetres thick;
 - (f) All head and curb stones shall be properly secured from the inside with round copper or galvanized iron pins;
 - (g) All headstones up to 150 millimetres in thickness shall be securely attached to the base in an acceptable manner;
 - (h) All memorial work shall be complete as far as possible before it is brought into any cemetery;
 - (i) In the case of single graves, foot kerbs shall consist of one solid piece.
 - (j) Memorial work shall be made of marble or granite or any other SANS-approved hard stone, subject to the approval of the caretaker;
 - (k) No person shall do any stonework, chiselling or other work upon any memorial work not connected with the fixing of such memorial work within any cemetery except where such work is expressly permitted in terms of these by-laws;
 - (l) If a memorial rests on a base:
 - (i) It must be set on a concrete foundation approved by the caretaker;
 - (ii) It shall be set in good cement mortar; and
 - (iii) The base shall be not less than 1 000 millimetres by 330 millimetres by 330 millimetres;
 - (m) The concrete foundation to the headstone shall have the following dimensions:
 - (i) The length, at right angles to the longitudinal axis of grave, must be at least 1 300 millimetres;
 - (ii) The width must be not less than the width of the bottom of the headstone plus a projection of 160 millimetres either side; and
 - (iii) The depth must be not less than 160mm;
 - (n) The concrete foundation for the kerbing shall extend across the foot of the grave plot and shall be of the following dimensions:
 - (i) The length must be at least 1 220 millimetres;
 - (ii) The width must be at least 330 millimetres; and
 - (iii) The depth must be at least 110 millimetres; and
 - (o) The tops of all concrete foundations shall be not less than 60 millimetres below ground level.
- (2) Lettering upon memorials must be engraved thereon or when lettering protrudes from the surface of the memorial work, it must be of durable material, be fixed permanently upon the memorial work and must not protrude more than 1 centimetre from the surface of the memorial work.
- (3) With the consent of the caretaker and the customer the name of the maker may be engraved on the memorial work: Provided that no address or other particulars shall be added thereto and that the caretaker may require that uniform letter sizes and spaces be used for such engraving.

53. Conveying of Memorial Work

The conveying of any stone, brick or memorial work or any part thereof along paths between graves may be undertaken only by means of a trolley fitted with pneumatic tires: Provided that no such trolley shall be moved along any path which in the opinion of the caretaker, is too narrow or otherwise unsuitable for such trolley.

54. Vehicles and Tools

Any person engaged upon any work upon any grave or graves shall use vehicles, tools and other appliances of such kind as not to contravene the by-laws.

55. Complying with the Caretaker's Directions

Any person carrying on any work within a cemetery shall at all times comply with the directions of the caretaker.

56. Rubbish and Damage to Cemetery

No person shall at any time leave any rubbish, soil, stone or other debris within any cemetery or in any way damage or deface any part of any cemetery or anything therein contained.

57. Times for Bringing in Material and Doing Work

- (1) No person shall bring memorial work or material or do any work, within any cemetery except during the following hours:
 - (a) Mondays to Fridays, with the exception of public holidays, from 07h00 to 16h00.
- (2) In exceptional cases the caretaker may permit work to be done outside of the times prescribed in subsection 0, but only if the prescribed charges determined from time to time by the municipality have been paid.

58. Inclement Weather

- (1) No person shall fix or place any memorial work during inclement weather or while the soil is in an unsuitable condition.
- (2) The caretaker may decide when the weather may be said to be inclement weather or when the soil is in an unsuitable condition.

59. Production of Written Permission

Any person who undertakes any work within any cemetery shall, upon demand by the municipality, produce the written consent issued to him in terms of section 43.

CHAPTER XI: ALL SECTIONS

60. Adornment of Graves

- (1) Subject to the provisions of subsection 0, no person shall, except with the consent of the caretaker, erect, place or leave upon or around a grave any railings, wire-work, flower stand, ornament, wreath, embellishment or other object of any kind, other than a vase, together with such flowers and foliage as may be inserted therein.
- (2) Notwithstanding the provisions of subsection 0, no person shall erect, place or leave upon or around a grave any railings, wire-work, flower stand, ornament, wreath, embellishment or other object of any kind in the aesthetic section.
- (3) Where the caretaker considers whether to grant consent for the adornment of any grave in terms of subsection 0, he must take into consideration the cultural and religious values of the local community as well as the cultural and religious values of the deceased interred in the grave.
- (4) Fresh flowers and foliage placed on a grave with the consent of the caretaker in terms of subsection 0 may be removed by him when in his opinion they have faded.
- (5) A memorial may incorporate not more than two vases or other receptacles for flowers or foliage.

61. Monumental Section

The following provisions shall apply to the monumental section of a cemetery, if there be one:

- (a) No memorial, which is erected, shall exceed a height of 1500 millimetres provided a proper foundation is incorporated in the design; and
- (b) No planting of any kind, except with the permission of the caretaker, shall be allowed on the graves.

62. Aesthetic Section

The following provisions shall apply to the aesthetic section of a cemetery, if there be one:

- (a) No kerbing or any form of base shall be erected;
- (b) The headstone memorial shall be erected only on the concrete strip as provided by the municipality;
- (c) The pedestal of the memorial shall not exceed 800 millimetres by 260 millimetres unless the memorial is to be erected on two adjoining grave plots, in which case the measurements may be 1 220 millimetres by 260 millimetres;
- (d) No memorial shall overhang the pedestal at any point and it shall be so erected on the berm that the edge nearest to the grave shall be at least 120 millimetres from the edge of the berm. The height of memorial shall not exceed 1000 millimetres, including the bar;
- (e) The municipality retains the right to flatten any remains of soil or fill any subsidence of a grave to the same level as the adjoining undisturbed ground level to facilitate mechanised maintenance;
- (f) Except for a memorial or vase for flowers or foliage which may be placed in the space provided on the berm, no object may be placed or kept on any grave after the expiration of six months from the date of interment;
- (g) Subject to the provisions of subsection 0, the caretaker may remove any object, which has been placed on a grave; and
- (h) Excluding the vase for flowers or foliage in the berm, no memorial may contain more than one additional container for flowers or foliage.

CHAPTER XII: CREMATORIA

63. Cremation

- (1) No person shall dispose of a body in any manner other than by interring it in a cemetery or having it cremated in a crematorium approved in terms of the provisions of the Crematorium Ordinance, 1965 (Ordinance 18 of 1965).
- (2) No person shall dispose of a body by cremation other than in accordance with the Crematorium Ordinance, 1965 (Ordinance 18 of 1965).
- (3) The ashes remaining after a cremation, may, with the written consent of the caretaker, be interred in a public or private grave in which the body of a relative or any other person has already been interred.
- (4) If ashes are not collected after a cremation, they may be strewn in a garden of remembrance by the caretaker.

64. Coffins

Coffins intended for cremation shall be constructed principally out of timber or wood derivatives, as regulated by regulation 14 of the Crematorium Ordinance, 1965 (Ordinance 18 of 1965).

CHAPTER XIII: PROHIBITED CONDUCT

65. Prohibited Acts within Cemeteries.

- (1) No person shall-
 - (a) solicit any business, order or exhibit, distribute or leave any tracts, business cards or advertisements within any cemetery other than as provided for in section 0 of these by-laws;
 - (b) sit, stand or climb upon or over any memorial work, gate, wall, fence or building in any cemetery;
 - (c) commit any nuisance within any cemetery;
 - (d) ride any animal or motorcycle within any cemetery, and no other vehicle may exceed a speed of 16 km per hour;
 - (e) intentionally bring any animal or bird into a cemetery or allow it to wander in it, with the exception of guide dogs;
 - (f) plant, cut, pick or remove any plant, shrub or flower without the permission of the caretaker;

- (g) hold or take part in any demonstration in any cemetery;
 - (h) hinder during the performance of his duties any officer, workman or labourer employed by the municipality in any cemetery;
 - (i) obstruct, resist or oppose the caretaker in the course of his duty or refuse to comply with any order or request which the caretaker is entitled to make;
 - (j) use or cause any cemetery to be used for any immoral purpose; or
 - (k) mark, draw, scribble, erect advertisements or objects on any wall, building, fence, gate, memorial work or other structure within any cemetery or in any other way deface them.
- (2) When assessing what constitutes prohibited conduct in terms of subsection 0 the social and cultural values of the local community should be taken into account.
- (3) The caretaker must place a notice in the cemetery setting out the prohibited conduct.
- (4) Any person wishing to lodge a complaint about any prohibited conduct must do so in writing to the municipality.

66. Keeping the Paths

All persons shall use only the roads, walks and turfed paths provided in the cemetery.

67. Entrance to and Exits from Cemeteries

No person shall enter or leave any cemetery except by the gates provided for that purpose and no person shall enter any office or fenced place in a cemetery except in connection with lawful business.

68. Penalties

- (1) Any person contravening any provisions of these by-laws or failing to comply therewith, shall be guilty of an offence and liable, on conviction, to a sentence of up to six months or a fine not exceeding R1000, or both and, in the case of any continued offence, to a fine not exceeding R50 per day for every day such offence is continued.
- (2) In addition to such fine prescribed in subsection 0, the person guilty of such contravention shall pay any cost incurred by the municipality as a result of any contravention of any of the provisions of these by-laws.
- (3) The caretaker may at any time order any person who does not comply with these by-laws in the cemetery or disturbs the sacred atmosphere in the cemetery in any manner, to leave the cemetery immediately in which event that person must forthwith comply with the order, or the caretaker may make arrangements that the trespassers be lawfully removed from the cemetery.

CHAPTER XIV: GENERAL

69. Rights to Graves

No person shall acquire any right to or interest in any ground or grave in any cemetery, other than such rights or interests as may be acquired in terms of these by-laws.

70. Non-discrimination

- (1) Subject to the provision of subsection 0, no provision of these by-laws shall be construed so as to authorise discrimination between any persons on the basis of race, religion or gender. Nor shall these by-laws be applied in such a way as to discriminate between such persons.
- (2) Notwithstanding the provisions of subsection 0, discrimination on the grounds of gender may be expressly authorised in terms of any provision of these by-laws which prescribes the wearing of appropriate apparel in a public place or that imposes a restriction upon the entry of persons into public ablutions, toilet and change-room facilities or prescribes different standards for such facilities.

71. Admission of Visitors

- (1) Every cemetery shall be open to the public during the following hours:
- (a) From 1 September to 30 April: 07:00 to 18:00; and
 - (b) From 1 May to 31 August: 07:00 to 17:30.
- (2) Notwithstanding the provisions of subsection 0, the municipality shall have the right to close any cemetery or part of it to the public for such period as it may consider fit if it is, in the opinion of the municipality, in the interests of the public to do so.
- (3) No person shall enter into or remain in any cemetery or part of it before or after the hours mentioned in subsection 0 or during any period when it is closed to the public.
- (4) No person under 12 years of age may enter any cemetery unless in the care of a responsible person.

72. Revocation of By-laws

The laws listed in Schedule A are hereby repealed in their entirety: Provided that the repeal of such by-laws shall not affect anything done in terms of or any right, obligation or liability acquired or incurred under those by-laws.

73. Date of Commencement

These by-laws commence on the date of publication in the Gauteng Provincial Gazette.

SCHEDULE A: LEGISLATION REPEALED

Meyerton-Jacobskop Municipality: Cemetery By-laws and Crematorium By-laws published as Administrator's Notice [-] dated 15 November 1996, to the extent that it falls within the jurisdiction of the Midvaal Municipality.