CEMETERIES DEVELOPMENT AND MANAGEMENT DRAFT BY LAW
PURPOSE OF THE BY-LAW

CEMETERIES, CREMATORIA AND FUNERAL UNDERTAKERS BY-LAW, 2016

To repeal the Mbombela Local Municipality: By-law for Cemeteries and Crematoria, 2008; to provide for the control, regulation and development of cemeteries; and to provide for the disposal of corpses and the interment of human remains, in a dignified manner; and to provide for matters connected therewith.

PREAMBLE

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

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

AND WHEREAS City of Mbombela seeks to ensure the proper management of cemeteries, crematoria and funeral undertakers within the area of jurisdiction of the City;

AND NOW THEREFORE, BE IT ENACTED by the City of Mbombela, as follows:-
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CHAPTER 1

1. Definitions

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

"Adult" means a deceased person over the age of 12 years;
"Ashes" means the cremated remains of a body;
"Berm" means a headstone allowed by the Council at the head or foot of any grave, in a landscape section or lawn section.
"Body" means the remains or any portion thereof of any deceased person;
"Cadaver" means a dead human body.
"Cemetery" means any land or part thereof within the municipality duly set aside by the Council as a cemetery;
"Child" means a deceased person who is not an adult;
"Columbarium" means the place set aside in the basement of the crematorium or chapel for the placement in niches of receptacles containing ashes;
"Container" means an urn for the keeping of the ashes of a deceased person in a memorial wall;
"Council" means the City of Mbombela acting under the powers delegated to it in terms of section 58 of the Local Government (Administration and Election) Ordinance, 1960 (Ordinance No. 40 of 1960,) and any officer of the Municipality to whom that Council has been empowered by the Council in terms of subsection (3) of the said section to delegate and has in fact delegated the powers, functions and duties vesting in the Council in relation to these by-laws;
"Crematorium" means a crematorium as defined in section 1 of the Ordinance and includes any place set aside by the Council for the cremation of a body;
"Crematory" means the room in the crematorium, which houses the cremation refractory;
"Demarcated area" means an area that must be indicated by the family to bury the body;
"Full services" means where all services such as water, electricity, sewerage, fencing etc. are rendered;
"Garden of remembrance" means a section of a cemetery or crematorium, excluding a columbarium, set aside by the Council for the erection of memorial work to commemorate a deceased person whose body was cremated and for the placing of ashes;
"Heroe" means a person who is admired for their courage, outstanding achievements, or noble qualities;
"Heroes acre" means an area of land set aside for the burial of heroes and senior Council officials;
"Indigent person" means a destitute person who has died in indigent circumstances, or if no relative or other person, welfare organisation or NGO can be found to bear the burial or cremation costs of such deceased person. The City of Mbombela can bury such a person as a pauper;
"Landscape section" means a cemetery or section of a cemetery set aside by the Council where memorial work is restricted in size as contemplated by section 27; where only headstones are allowed;
"Low services" means rudimentary services as found in rural cemeteries;
"Memorial section" means a cemetery or section of a cemetery, which is not a landscape section or a lawn section; granite slabs is allowed to cover the body;
"Memorial wall" means a wall in a crematorium or cemetery provided for the placement of ashes and/or inscribed tablets commemorating deceased persons who have been cremated;
"Mausoleum" means an above ground burial vault;
Memorial work" means any headstone, monument, plaque or other similar work or portion thereof erected or intended to be erected in any cemetery or crematorium commemorating a deceased person and includes a kerb demarcating any grave and a slab covering any grave;
"Municipality" means the area under control and jurisdiction of the Council as well as any outside area contemplated in section 7(b) of the Local Government Ordinance, 1939 (Ordinance No. 17 of 1939);
"Niche" means an opening in a memorial wall for the placing of a container;
"Non-resident" means any person who at the time of his death was not a resident of City of Mbombela;
"Officer in charge" means any person authorised by the Council to be in control of any cemetery and in the case of a crematorium, the registrar of such crematorium;
“Office hours” means Monday to Friday 07h30 to 16h00 excluding Saturday, Sunday and Public holidays;
"Ordinance" means the Crematorium Ordinance, 1965 (Ordinance No. 18 of 1965);
"Pauper" means a person who has died as an unknown person or if no relative or other person, welfare organisation or NGO can be found to bear the burial or cremation costs of such deceased person. Paupers are buried maximum three in a grave;
"Plot" means any area laid out in any cemetery for not less than three and not more than six graves adjoining each other, in respect of which the exclusive right to enter has been acquired in terms of these by-laws; See tariffs for details;
"Registrar of deaths" means any person appointed as registrar of deaths in terms of the Births, Marriages and Deaths Registration Act, 1963 (Act No. 81 of 1963);
"Regulation" means a regulation published in terms of the Ordinance;
"Resident" means any person who, at the date of his death ordinarily resided in the City or who for at least six months immediately prior to such date was the owner of fixed property in the City;
"Security forces grave area" means a section in a cemetery set aside for the internment of deceased members of the Defence Forces of the Republic of South Africa;
“Semi services” means where all services are not provided yet;
"Tariff" means a tariff of charges as determined by the Council from time to time, by special resolution, in terms of section 80B of the Local Government Ordinance, No. 17 of 1939;
"Working hours" from Monday to Friday as determined from time to time by the Council to be normal working hours. Weekends to be regarded as extra hours See weekends tariffs.
CHAPTER II

INTRODUCTION

2. Establishment of cemeteries

Any ground can be set aside by the Council for a cemetery and no person shall inter a body or cause it to be interred in any other place within the municipal area, without contacting City of Mbombela.

3. Disposal of a body

No person shall, save with the prior written consent of the Council, dispose of or attempt to dispose of a body, other than by internment in a cemetery or cremation in a crematorium.

CHAPTER III

INTERNMENTS

4. Permission to inter and placement of container with ashes

4.1 No person shall inter a body in any cemetery, cause it to be so interred, cause a body to be cremated or place a container with ashes without the permission of the officer in charge or without arranging a date and time for the internment or placing with such officer.

4.2 Such permission shall not be granted unless -

(a) a burial order in terms of the Births, Marriages and Deaths Registration Act 1963, has been issued and produced to the officer in charge;

(b) an application in terms of section 5 has been submitted;

(c) The applicable charge is paid to Council.

4.3 in considering the granting or refusal of the permission referred to in subsection (1), the officer in charge shall have regard to the rights and safety of the people making use of the cemetery, and the officer in charge, should he grant such permission, set the conditions that he regards necessary in order to protect the aforesaid rights and safety.

5. Application for internment / burial in demarcated areas.

5.1 Any person desiring to have a body interred shall, subject to the provisions of subsection (2) and (3), submit to the officer in charge an application completed in the form set out in Schedule A to these by-laws, signed by the nearest surviving relative of the deceased person or person authorised by such relative, or if the officer in charge is satisfied that the signature of such relative or person authorised cannot be obtained timeously, the signature of any other person who satisfies the officer in charge as to his identity and interest in the internment concerned.

5.2 Every application for internment shall be submitted at least sixteen working hours before such internment. The family must indicate a section where they want their body buried.

5.3 Notice of any postponement or cancellation of any internment shall be given to the officer in charge not later than eight hours before the internment was to have taken place.
6. **Internment only in allotted grave**

Subject to the provisions of these by-laws, no internment shall take place in any grave not allotted by the officer in charge.

7. **Reservation of graves**

7.1 The City of Mbombela reserves the right to allow reservation of graves or not to reserve graves.

(a) Application in this regard must be sent to Parks and Cemetery Division.
(b) If application is approved, the applicant shall pay the current amount to Council as a deposit. This arrangement is renewable after 10 years to find out if family is still interested.
(c) The applicant must adjust to and pay the difference in tariff if an application to use the grave is received at later stage.
(d) Reservation will be allowed when space is still available, if not, on top burial will be allowed.

7.2 Transfer or disposal of rights

Any holder of a grave may in writing, after obtaining written permission from the officer in charge, transfer his rights in respect of a private grave to any person: Provided that no such transfer shall be valid unless -

(a) a copy of the document effecting the transfer has been furnished to the officer in charge with a sworn affidavit from owner of grave that is selling or transferring grave; and

(b) the appropriate charge as determined from time to time by the Council has been paid.

7.3 If by reason of the death or permanent absence from the Republic of South Africa of an applicant contemplated in section 5(1) or the holder of a grave, or for other good cause, the Council is satisfied that such person will not be exercise his rights to have a public grave converted into a private grave or that he will not exercise his rights in respect of any private grave, the Council may dispose of such grave to any other person upon payment by such person of the appropriate charge.

8. **Subsequent internment**

8.1 Not more than two internment’s may be made in any grave – except paupers. Provided that a third internment may be made in such grave with the consent of the officer in charge if the grave has been deepened as contemplated in section 10 (1) (b).

8.2 Any holder of a grave desiring to have a body interred in a grave a second or third internment in such grave shall:

(a) reasonable requirement of the officer in charge in respect of such removal.

(b) After compliance with paragraph (a), give at least 24 hours written notice to the officer in charge in the form prescribed in Schedule A to these by-laws of such internment, which period shall be calculated exclusive of any Saturday, Sunday and Public Holiday.
8.3 The notice referred to in subsection (2) shall be accompanied by written proof of the title of the holder's rights to the grave concerned and by the appropriate charges prescribed.

9. Dimensions of graves, funerary urn, niche and space against a memorial wall

9.1 Subject to the provisions of section 10 -

(a) in any cemetery existing at, and the planning and layout of which have been completed prior to, the commencement of these by-laws: --

(i) An adult’s grave shall measure 2200 mm in length and 762 mm in width, at ground level; and have an excavation of 1900 mm deep.

(ii) A child's grave shall measure 1370 mm in length and 452 mm in width, at ground level; and have an excavation of 1500 mm deep.

(iii) a funerary urn shall measure 240 mm x 240 mm x 150 mm.

(iv) a niche in a memorial wall shall measure 280 x 280 mm x 280 mm;

(v) a grave in a garden of remembrance shall measure 500 mm in length, 300 mm in width and 500 mm in depth.

(vi) The space for the fixing of a memorial work against a memorial wall shall be 270 mm x 12 mm x 25 mm.

10. Enlargement of excavation

10.1 Notwithstanding the provisions of section 9: -

(a) If a coffin is too large to be accommodated within the excavation of a grave, such excavation may be enlarged to a size which will accommodated such coffin and must be indicated clearly on the form of Schedule A;

(b) A private grave may be deepened at the request of an applicant contemplated in section 5 so as to permit the internment in such grave of a third body;

10.2 If the excavation of a grave is to be enlarged, or deepened as contemplated in subsection (1), the officer in charge shall be notified accordingly, at least 16 hours before the internment; which period exclude any Saturday, Sunday and Public Holiday, and such notice shall be accompanied by payment of the appropriate charge determined by the Council from time to time.

11. Covering of a coffin

11.1 There shall be at least 1200 mm of soil between any adult's coffin and the surface of the ground, and a least 900 mm of soil in the case of a child's coffin;

11.2 At least 300 mm of soil shall be placed over any coffin immediately after internment;

11.3 The undertaker must see to it that the grave is fully closed before he leaves the cemetery.

12. Construction of coffin

No coffin intended to be placed in a grave shall be constructed of any material other than natural timber or other decomposable material. Any other material must be within SABS standards and pre-approved
13. **Register**

Council must keep a record of all interments and such record must contain-

(a) the particulars of the person who requested the interment;

(b) the particulars of the deceased person whose corpse is to be interred or has been interred, such as the name, address, and identification number;

(c) the date of the interment and the number of the grave in which the corpse or ashes is interred or the location of the receptacle where the ashes have been placed.

14. **Right of Burial**

14.1 No person shall acquire any right including a right of burial in any ground or grave in a cemetery owned by Council, other than such rights or interests as may be obtainable under this By Law.

14.2 The determination of the identity of the holder of existing rights to further burials in existing graves shall be determined with reference to the register of Council.

14.3 On application in terms of section 4 and on payment of the prescribed fee, a person may acquire the right of burial in a public grave.

14.4 On application in terms of section 4 and on payment of the prescribed fee, a person may acquire the exclusive right to subsequent burials in the same grave provided that this right will lapse on the exhumation of the corpse buried in such grave.

14.5 The right to subsequent burials shall not be transferable to a third party other than on the death of the holder of the right, in which event the right shall be transferred to his or her next of kin.

14.6 Where the next of kin of the deceased person buried in the grave to which the right to subsequent burial relates is not a holder of the right, in the event that the next of kin objects to a subsequent burial in that grave, the consent of the next of kin shall be required prior to any subsequent burial being permitted.

14.7 The right to subsequent burials referred to in section 4 is conditional on the suitability of the grave for additional burials as determined by Council.

14.8 The next of kin or other closest surviving relative of a deceased person who is buried in a public or private grave may, in writing, forfeit such public or private grave to Council, and thereby grant consent for the exhumation of the remains of the deceased person buried in that grave, and the burial therein of an unrelated person or persons.

14.9 In the case of a private grave, where the holder of the right acquired in terms of subsection 14.4 is not the next of kin or other closest surviving relative of the deceased, the joint consent of both the holder of the right and the next of kin or other closest surviving relative of the deceased, must be obtained before a grave is forfeited in accordance with subsection 8.
CHAPTER IV

FUNERALS

15. Religious ceremonies or memorial services

Subject to the directions of the officer in charge, a religious ceremony or memorial service may be conducted in any cemetery. Provided the allocated time limit is kept no memorial service can take place while burial continues.

16. Music Inside Cemeteries

No unduly loud or disturbing music with singing shall be permitted in a cemetery. and instrumental music and amplified sound shall only be permitted with the consent of City of Mbombela.

17. Control of hearses

No person shall within a cemetery, drive a hearse or cause any hearse to be driven elsewhere than on a demarcated driveway, or leave or detain any hearse in such roadway after removal of the coffin from such hearse.

18. Conveyance of bodies

No person shall in any street, cemetery or other public place convey a body in an unseemly manner or convey it in such a manner that the body or any part thereof is visible from outside the vehicle in which it is conveyed.

19. Compliance with instructions at funerals

Any person taking part in a funeral, funeral procession or ceremony within any cemetery shall comply with any reasonable instruction of the officer in charge.

20. Funeral hours

20.1 Funerals may take place on Saturdays or Sundays and Public Holidays at extra cost; and burial is between 07h00 and 16h00. See tariffs.

20.2 On condition that the booking is made during normal office hours and on the conditions as stipulated in 5.2 Provided that no such charge shall be payable in respect of a burial of Muslims, if the applicant assumes full and exclusive responsibility for filling the graves, and the grave is filled to the satisfaction of the officer in charge.

20.3 During the week burials can take place at normal burial rates between 07h00 and 16h00.

CHAPTER V

RE-OPENING OF GRAVES AND EXHUMATIONS

21. Applications for Exhumations

21.1 An application for exhumation must be submitted to Council, and must include the following:

(a) the completed application form;
(b) a copy of the death certificate:

(c) a letter or an affidavit from the next of kin of the deceased consenting to the exhumation;

(d) payment of the prescribed fee.

22. **Conditions of exhumation**

22.1 No person shall:

   (a) exhume or cause to be exhumed any body without the prior written consent of the Council and the approval of the Provincial Health Department in terms of the Removal of Graves and Dead Bodies Ordinance, 1925 (Ordinance No. 7 of 1925);

   (b) exhume or cause to be exhumed any body during any period when the cemetery is open to the public.

22.2 The written consent referred to in subsection (a) must be submitted to the environmental health practitioner of Ehlanzeni District Municipality at least five working days prior to the approved exhumation date.

22.3 The environmental health practitioner may impose conditions with respect to exhumation as referred to in subsection (a) and an exhumation may only proceed when such conditions have been complied with.

22.4 No exhumation or re-interment may proceed without the presence of a competent and experienced environmental health practitioner employed by the Council and a registered funeral undertaker.

22.5 The remains of a deceased person must be reburied or cremated within 48 hours, unless the environmental health practitioner determines that circumstances or conditions prevent reburial or cremation within the 48 hour period.

22.6 The remains of the deceased person must, pending reburial or cremation be kept at a registered funeral undertakers premises.

22.7 Exhumations shall be carried out in accordance with the Council’s policy on exhumation and re-interment of human remains.

22.8 A Commonwealth war grave may only be exhumed in accordance with the provisions of section 3 of the Commonwealth War Graves Act, 1992 (Act No. 8 of 1992).

22.9 The person carrying out the exhumation must provide a suitable receptacle for each body or remains.

22.10 If remains are to be exhumed from any grave, the officer in charge shall cause the grave to be excavated for such exhumation but shall not, except as provided by section 19, remove any body from the grave.

22.11 If a grave is required to be excavated for exhumation, the officer in charge shall be given at least 48 hours written notice of the proposed exhumation and such notice shall be accompanied by the appropriate charge as determined by the Council from time to time, as well as the consent and approval contemplated in subsection (1).
22.12 The grave from which any body is to be exhumed shall be effectively screened from view during the exhumation, and the person carrying out such exhumation shall provide a suitable receptacle for the body.

22.13 The person carrying out such exhumation shall ensure that the body and grave are properly disinfected and deodorised.

22.14 No body may be exhumed less than eighteen months after burial, other than in compliance with a Court Order.

22.15 An emergency exhumation shall comply with the provisions of sections 45 and 46.

22.16 A member of the South African Police Services must be present during normal and emergency exhumations.

23. Re-internment by the Council

23.1 If, in the opinion of the Council, the exhumation of any body is advisable or necessary, or if a body has been interred in a grave in contravention of these by-laws, the Council may, subject to the provisions of the Removal of Graves and Dead Bodies Ordinance, 1925, cause such body to be exhumed and re-interred in another grave: Provided that whenever possible a relative of the deceased person shall be notified at his last known address of the intended re-interment, and such relative shall be entitled to attend such re-interment.

24. Wrongful Burial

Council may if a body has been buried in contravention of this By-law, subject to the provisions of section 4, cause the body to be exhumed and reburied in another grave, in which event the relatives of the deceased must be notified of the intended exhumation and reburial and allowed to attend.

25. Reduction burial

The City may, after the lapse of a minimum time period of ten (10) years after the most recent burial in a grave, exhume the remains of a corpse for the purposes of the reduction of the corpse and rebury the remains of that corpse in the same grave, in a smaller coffin, at a greater depth, subject to the conditions that-

(a) any holders of private rights in that grave, acquired in terms of subsection (5) and the next of kin or other closest surviving relative of the deceased (where the holder of the right is not the next of kin or closest relative of the deceased) have given their consent;

(b) in respect of any grave where no private rights have been acquired, where the next of kin, or other closest surviving relative of the corpse has given consent.

CHAPTER VI

CARE OF GRAVES

26. Gardening of graves and objects on graves

26.1 No person other than the Council shall garden any grave.
(a) No person shall erect, place or leave upon a grave any except during the first twenty-eight (28) days following the intern therein object or decoration,

(b) Moveable objects can be allowed:

(c) Notwithstanding the provisions of paragraph (a), natural or artificial flowers and receptacles in which they are contained may be placed on a grave at anytime: Provided that on a grave with a berm natural or artificial flowers may only be placed as contemplated in section 25(e).

(d) The officer in charge or any member of his staff may remove natural or placed on withered, faded or damaged, or after the period contemplated in section 20.1(a) has expired. Plants will be moved to the nursery.

(e) After six months of burial, all affected graves shall be levelled to allow smooth maintenance operation on landscape section.

(f) Minimum height for tombstone must be at least 500mm from base.

Permission must be obtained from Council if any member of the public wishes to take care of an individual grave or graves, such a grave or graves must always be kept clean, the same as Council maintained cemetery.

CHAPTER VII

MEMORIAL WORK

27. Erection or re-erection of memorial work

27.1 No person shall, without the prior written consent of the officer in charge, erect any memorial work in any cemetery or crematorium, or bring any material into any cemetery or crematorium for the purpose of erecting, altering or repairing any memorial work.

27.2 Application for consent in terms of subsection (1) shall be made at least ten working days before the proposed date of the erection to the officer in charge. Said application shall be accompanied by a plan in detail of the memorial work as well as the proper charge as determined by the Council from time to time.

27.3 If memorial work is removed for additional inscription or other amendments thereto, the provisions of subsection (2) shall mutatis mutandis apply.

27.4 Save with the permission of the officer in charge, no work on any memorial work shall be performed in a cemetery on a Saturday, Sunday or a Public Holiday, or at any time after normal working hours. (07:30 – 16:00).

27.5 No person shall erect or re-erect any memorial work within six months after the internment, or when the ground in the opinion of the officer in charge, is in an unsuitable condition.

27.6 The person in charge of the erection or re-erection of any memorial work shall produce the written consent referred in subsection (2), at the request of the officer in charge.

27.7 No memorial work or material for use in connection therewith shall be conveyed in any cemetery or crematorium in such manner as may damage the paths or grounds or any other property of the Council in the cemetery.
27.8 Any surplus material, rubbish or rubble resulting from the erection or re-erection of any memorial work, shall be removed forthwith by the person responsible for such erection.

27.9 No memorial work shall be erected unless all the appropriate charges as determined by the Council from time to time have been paid.

27.10 Council is not liable for damage to memorial work resulting from any subsiding soil.

27.11 Council is not responsible for any damage which may at any time occur to a memorial work and which is not due to the negligence of the authorised officials of Council.

28. **Inferior memorial work**

The Council may prohibit the erection or re-erection of any proposed memorial work, which in its opinion is of inferior workmanship or quality of which is in any way likely to disfigure any cemetery or crematorium.

29. **Inscriptions on memorial work**

29.1 Memorial work on a grave shall on the base in the middle and a commemorative plaque on a grave in a garden of remembrance shall on the upper surface in the lower right hand corner, display a clear and permanent number assigned to the grave concerned by the officer in charge.

29.2 The only particulars of the manufacturer of memorial work, which may appear thereon, shall be his name, which shall be placed at the base of the memorial work, maximum size 25 x 50 mm.

30. **Dismantling of memorial work**

30.1 Subject to the provisions of this section, no person, other than the holder of a grave or a person authorised in writing by such holder, shall dismantle, alter or disturb any memorial work on a grave and such holder or person shall only do so with the prior permission of the officer in charge.

30.2 Dismantled memorial work shall not be left in any part of the cemetery except on the grave on which such memorial work had been erected: Provided that the officer in charge may, in the case of a second or subsequent internment in such grave, permit such memorial work to be left elsewhere in the cemetery for a period not exceeding 30 days after such internment.

30.3 If a holder or person referred to in subsection (1), fails to re-erect dismantled memorial work within six months after it has been dismantled, or if such memorial work is left within the cemetery in contravention with subsection (2), the Council may give 30 days' written notice to such holder or person requiring him at his own expense to remove such memorial work from the cemetery together with all rubble connected therewith.

30.4 If in the opinion of the Council, any memorial work has become a danger to the public or has been erected in contravention with these by-laws, or has become damaged, the Council may give written notice to the holder or person referred to in subsection (1), requiring him at his own expense, to render such memorial work safe or to alter such memorial work so that it complies with the provisions of these by-laws, or to dismantle and remove such memorial work from the cemetery together with all rubble connected therewith.

30.5 If such holder or person fails to comply with a notice in terms of subsection 24 (3) or (4), the Council may, without incurring any liability to pay compensation for damages -
(a) re-erect the memorial work concerned; or

(b) dismantle and dispose of the memorial work concerned and remove any rubble connected therewith; or,

(c) render the memorial work concerned safe;

(d) and such holder or person shall be liable for any costs incurred by the Council in doing any act in terms of this subsection.

30.6 If, in the opinion of the Council any memorial work has become so dangerous to the public that immediate steps to safeguard the public are essential, the Council may, without giving any notice to the holder or person referred to in subsection (1), and without incurring any liability to pay compensation for damages -

(a) dismantle the memorial work concerned and remove it together with any rubble connected therewith; or

(b) render the memorial work concerned safe.

30.7 If the Council has acted in terms of subsection (6), it shall immediately, in writing, notify the holder or person referred to in subsection (1) of the work that it has done and if memorial work was dismantled in terms of subsection (6) (a), that unless such person reclams and removes the memorial work from the cemetery within a reasonable period stipulated in the notice the Council will dispose thereof without thereby incurring any liability to pay compensation for damages.

30.8 Such holder or person shall be liable for any costs incurred by the Council in doing any act in terms of subsection (6).

30.9 If the holder or person referred to in subsection (1) fails to pay the cost referred to in subsection (8) or reclaim and remove memorial work dismantled by the Council in terms of subsection (6) (a), the Council may dispose of such memorial work in any manner it deems fit and if any proceeds are derived from such disposal they shall be offset against the cost of the dismantling, removing, storing and disposing of such memorial work and rubble connected therewith.

31. General requirements for memorial work

31.1 Any person who erects or re-erects memorial work shall ensure that -

(a) Whenever any part of such memorial work is to be joined to any other part, it shall be so joined by the use of copper or galvanised iron clamps, pins or dowels at least 8 mm thickness and a length sufficient to fit holes which shall not be less that 50 mm deep;

(b) a Foundation 100 mm deep, must cover the whole grave plot (2 600 x 1 620 mm) on which the memorial wall is erected and thereafter finished off all round with a 100 mm x 100 mm layer of cement;

(c) All kerbstones are squared and laid in accordance with the instructions of the officer in charge so as to ensure that when the ground surrounding such kerbstones has been levelled, such kerbstones do not exceed a height of 230 mm above ground level;

(d) If loose stone chips are placed on a grave, the level of such stone chip shall not be
higher than 10 mm below the level of the surrounding kerbstone;

(e) Sufficient space is left on a memorial work for the placing of flowers, and

(f) All memorial work shall be of granite or natural rock. The officer in charge on written application may approve the use of any other material.

(g) Council may remove memorial work that in its opinion is indecent, inferior, offensive or objectionable, without paying compensation to the owner or any other person

32. Requirements of memorial work in memorial section

32.1 in a cemetery existing at the coming into operation of these by-laws, the maximum horizontal measurements of any memorial work erected on a grave in memorial section shall be:

(a) in the case of an adult's grave, 2 200 mm in length and 1 100 mm in width, with a kerb width of 150 mm;

(b) in the case of a child's grave, 1 500 mm in length and 600 mm in width, with a kerb width of 150 mm.

33. Requirements for memorial work in landscape section

33.1 (a) Any memorial work to be erected in a landscape section shall consist of a base no longer than 380 mm X 910 mm X 458 mm and thickness not less than 80mm for a single grave and not larger than 380 mm X 2120 mm X 450 mm and thickness not less than 104mm for a double grave.

(b) The size of a memorial tombstone may not exceed the following measurements: Height 1800 mm, width 910mm and a thickness not less than 80mm for a single grave and height 1800 mm, the width 2120mm and a thickness not less than 104 mm for a double grave.

(c) Books and scrolls are allowed on condition that base must at least be 380 mm X 910 mm X 458 mm for a single grave and 380 mm X 2120 mm X 458 mm for a double grave.

34. Requirements for memorial work in garden of remembrance

34.1 Any memorial work erected on a grave in a garden of remembrance, must have a foundation with the following measurements:

(a) 600 mm in length x 400 mm in width x 50-mm deep concrete, and the memorial work for such a grave must have the following measurements:

(b) 600 mm in length x 400 mm in width x 50 mm in thickness

(c) The memorial work shall be affixed with at least 5 copper or galvanised spikes, 50 mm in length. All memorial work shall be level to ground level.

35. Requirements for memorial work against memorial wall

35.1 (a) Any memorial work affixed to a memorial wall, shall have the following measurements: 270 mm x 125 mm x 25 mm, and shall be fixed to the wall by
means of at least four copper or galvanised dowels (6mm x 50 mm).

(b) The maximum size of niches allowed is 215 mm (length) x 76 mm (height) x 152mm (width).

36. Position, movement and removal of Memorial Work

36.1 No person may erect a memorial work on a grave before the position in which such memorial work is to be placed has been indicated in terms of the approved plan.

36.2 Should the condition referred to in subsection 35.1 not be complied with, Council may, on written notice to such person, alter the position of the memorial work and recover the costs of the alteration from the person who erected the memorial work.

36.3 In the instance where a memorial work has originally been placed in a certain position with the express consent of Council, any alteration of the position in terms of the provisions of this section is executed at the expense of Council.

37. Times for bringing in material and doing work

37.1 No person may bring memorial work or material in connection therewith, or do any work other than the dismantling of memorial work for interment purposes within a cemetery except during the times determined by Council.

37.2 No person may engage in work which may disturb or intrude upon a funeral for the duration of the funeral.

38. Supervision of work

Any person engaged in memorial work in a cemetery or crematorium shall affect such work under the supervision and to the satisfaction of the officer in charge. No erection of memorial work without a City Mbombela official present.

39. Producing of Written Permission

A person charged with a work or on his or her way to or from work within the cemetery must, upon demand from Council or its authorised official, produce the written consent issued to him or her in terms of section 27.1

40. Internment and exhumation of ashes

40.1 No person shall inter any ashes in grave or exhume ashes from a grave without prior written permission of the officer in charge.

40.2 Application for internment or for exhumation of cremated remains shall be made to the officer in charge and be accompanied by the appropriate charge as determined by the Council from time to time.

40.3 The officer in charge shall prepare such grave for the interment or the exhumation of ashes.

40.4 The exclusive right to inter ashes in a grave referred to in subsection (1), may be acquired with the consent of the officer in charge, which consent shall only be given after application for the cremation of the body, the ashes of which are to be interred in such grave, has been made and upon payment of the appropriate charge as determined by the Council from time to time.
41. **Use of niches and spaces, affixing of memorial work**

No niche or space in a garden of remembrance or space on a memorial wall shall be used for the storage of ashes or for affixing memorial work without the prior consent of the officer in charge and without payment of the appropriate charges as determined by the Council from time to time.

**CHAPTER VIII**

**THE ADMINISTRATION AND CONTROL OF CEMETERIES**

42. **Appointment of Officer in Charge**

42.1 Council must appoint an officer in charge for each cemetery to control and administer the cemetery.

42.2 The officer in charge must take into account the customs of the deceased person and the persons responsible for the interment and must accommodate these within the framework of this By Law.

43. **Prohibited acts**

43.1 No person-

(a) under 16 years of age shall enter any cemetery or crematorium except in the care of a person over the age of 16 years;

(b) shall enter or leave any cemetery except by the gateways provided.

43.2 No person shall, within any cemetery -

(a) enter any office or any enclosed place where entry is prohibited by means of a notice displayed in a conspicuous position, except on business connected with such cemetery;

(b) solicit any business, or exhibit, distribute or leave any tract, business card or advertisement;

(c) sit, stand, climb upon, or deface of damage any memorial work or Council property;

(d) commit any offensive, indecent or objectionable act or any act, which constitutes as a nuisance or causes a disturbance;

(e) introduce any animal without the consent of the officer in charge;

(f) hold or take part in any demonstration or meeting;

(g) Remove, transplant, pick, cut, saw, chop or prune any plant, grass, shrub or tree or part thereof, or act in a similar manner, without the consent of the officer in charge; Plants that are found to be planted on the graves shall be removed to nursery.

(h) drive or park any vehicle or bicycle without the prior consent of the officer in charge on any road where driving or parking is prohibited by means of a notice displayed in a conspicuous position, or drive or park any vehicle contrary to any
direction of the officer in charge;

(i) drive any vehicle or ride any cycle at a speed exceeding 20 km per hour;

(j) obstruct, resist or oppose the officer in charge or any member of his staff in the exercising of his powers or the performance of his duties under these by-laws, or refuse to comply with any lawful order or request of the officer in charge or any member of his staff;

(k) play or cause to be played any musical instrument or apparatus without the prior consent of the officer in charge;

(l) play any sport or conduct himself in a manner not in keeping with the atmosphere of a cemetery or crematorium;

(m) erect any partitioner or other object on a grave;

(m) hinder members of any religious fellowship to conduct religious practised in connection with an interment of memorial service subject to the control and regulations of the Council;

(o) transport an uncovered body or cause it to be transported or uncover such a body or part thereof or cause it to be uncovered in any street, cemetery or public area;

(p) Occupy a cemetery or part thereof longer than 60 minutes for the purpose of an internment.

(q) Plant on and around grave.

44. **Liability of Council in respect of injury or damage**

The Council shall not be liable for any injury to a person or damage to any property if such injury or damage has been sustained in a cemetery.

45. **Free grave or graves**

44.1 (a) If a person has died in indigent circumstances, and if no relative or NGO can be found to bear the burial or cremation costs of such deceased person, the Council may donate a grave or graves free of charge to a relative or community concerned: Provided that application be done through the office of the Mayor prior to interment of such a body.

(b) The Mayor can also donate a grave or graves in a case of disaster or any unbecoming circumstances, which arose public concern.


44.2 **Qualification of an Indigent**

For a household to qualify as an indigent, a household should comply with the following requirements:

(a) The applicant must be eighteen (18) years of age and above

(b) Total household income of all occupants of a household must be less than the
equitable share, which has been allocated to council (subject to annual adjustments by council or other spheres of government) R 1 100.00 per month.

(c) The applicants must have an active account with the municipality; Silulumanzi or ESKOM as they are water and electricity providers on behalf of the municipality in other areas of Mbombela.

(d) The applicant must own a single property (stand). He/ she cannot have two properties registered in his/her name.

(e) All households that are child headed, even if they are below eighteen (18) years of age can apply for the Indigent support.

The registered indigent must be both the owner/ or occupant of the property

46. **Cemetery hours**

Every cemetery and crematorium shall be open to the public during such hours as are indicated on a notice board at each gate of such cemetery: Provided that the officer in charge shall be entitled at any time to close off any cemetery or crematorium or part thereof to the public for such period and for such authorised and official purposes as he may deem fit.

47. **Complaints**

Any person, who wishes to submit a complaint in terms of these By Laws, must do so in writing to the officer in charge. And such complaint or Council can look at amendment.

48. **Notice of compliance and representations**

48.1 A notice of compliance must state –

(a) the name, residential and postal address of the person;

(b) the nature of the state of disrepair;

(c) sufficient detail to enable compliance with the notice, the measures required to remedy the memorial work;

(d) that the person must, within a specified time period, take the measures to comply with the notice, to diligently continue with the measures, and to complete the measures before a specific date;

(e) that failure to comply with the requirements of the notice within the period contemplated in paragraph (d) is an offence;

(f) that written representations, as contemplated in subsection 47.3 may, within the time period stipulated under paragraph (d), be made to Council at a specified place.

48.2 Council, when considering any measure or time period envisaged in subsections

47.1 (d) and (e), must have regard to –

(a) the principles and objectives of this By Law;
the cause and state of disrepair;

(c) any measures proposed by the person on whom measures are to be imposed; and

(d) any other relevant factors.

48.3 A person may within the time period contemplated in subsection 47.1 (f) make representations, in the form of a sworn statement or affirmation to Council at the place specified in the notice.

48.4 Representations not lodged within the time period will not be considered, except where the person has shown good cause and Council condones the late lodging of the representations.

48.5 Council must consider the representations and any response thereto by an authorised official or any other person.

48.6 Council may, on its own volition, conduct any further investigations to verify the facts if necessary, and the results of the investigation must be made available to the person, who must be given an opportunity of making a further response if he or she so wishes, and Council must also consider the further response.

48.7 Council must, after consideration of the representations and responses, make an order in writing and serve a copy of it on the person.

48.8 The order must –

(a) set out the findings of Council;
(b) confirm, alter or set aside in whole or in part, the notice of compliance; and
(c) specify a period within which the person must comply with the order made by Council.

48.9 If the notice of compliance is confirmed, in whole or in part, or is altered but not set aside, Council will inform the person that he or she must discharge the obligations set out in the notice within the time specified therein.

48.10 Where there has been no compliance with the requirements of the notice within the time specified therein, Council may take such steps as it deems necessary to repair the monumental work and the cost thereof must be paid to Council by such person.

CHAPTER IX

SECTIONS IN A CEMETERY

49. Muslim Cemetery Section

Council respects the culture of the Muslim community. This community is allowed to conduct burial after hours and allow their burial to face Qiblah (Mecca) but the following must be fulfilled:

Municipality must keep records of the dead.

(a) A grave or graves must be kept open for late burials;
(b) Maintenance of this cemetery site must be the responsibility of City of Mbombela;
(c) Plotting of and grave dimensions must be to the Mbombela standards;
(d) Grave mounds must be levelled to ease maintenance, and
(e) an Application must be send to Council and approval obtain if the Muslim community wants to take responsibility for the grave maintenance.

(f) The necessary application forms, as set out under 5 must be completed and submitted to the relevant Council Office and the required tariffs paid on the opening of Council Offices.

50. **Berm Section**

In this section, every second grave is used for burial. The reserved graves that are left in between are used later on. This type of graves allows more space between them for easy maintenance. Tombstones are erected in “Berms”. Tombstones lines are measured and marked by the officer in charge. (Height 1800 mm, width 910mm and a thickness not less than 80mm for a single grave and height 1800 mm, the width 2120mm and a thickness not less than 104 mm for a double grave).

51. **Children Section**

This area of ground is for children who are 12 years or younger. (Height 1 500 mm and 600 mm in width and a thickness not less than 80mm).

52. **Memorial Section**

This section is similar to “Berm” section; the only difference is that the public is allowed to erect slabs to cover the body of the grave when erecting a tombstone. (In the case of an adult's grave, 2 200 mm in length and 1 100 mm in width, with a kerb width of 150 mm; in the case of a child's grave, 1 500 mm in length and 600 mm in width, with a kerb width of 150 mm).

53. **Pauper Section**

In this section, unclaimed bodies are buried; records are kept by the relevant department. Please note that the bodies are marked and buried three in a grave.

54. **Memorial Wall**

In this section, means a wall in a crematorium or cemetery provided for the placement of ashes and/or inscribed tablets commemorating deceased persons who have been cremated. (270 mm x 125 mm x 25 mm).

55. **Garden of Remembrance**

In this section cremated ashes are emptied and flowers are planted around to allow beauty and to bring nature close to the dead. (600 mm in length x 400 mm in width x 50-mm deep concrete, and the memorial work for such a grave must have the following measurements: 600 mm in length x 400 mm in width x 50 mm in thickness).

56. **Family graves**

Here, a plot for graves is sold to families. The stands will vary from between 3 and 6 graves per plot. See tariffs for details.

57. **Mausoleums**

Here, stands will be sold, again to allow members of the public to erect permanent structures for on surface burial. The family concerned will erect the structure at their own cost on family grave sites. See tariffs for details.

58. **Plot Section**
Means any area laid out in any cemetery for not less than three and not more than six graves adjoining each other, in respect of which the exclusive right to either has been acquired in terms of these By-laws. See tariffs for details

59. **Heroes acre**

Subject to the provisions of these by-laws, a space in a cemetery is set aside with the special consent of the Council for the internment of members of the Defence forces. Internments and the erection of memorial walls to be done in conjunction with the security forces.

Subject to the provisions of these by-laws, a space in a cemetery is set aside with the special consent of the Council for the internment of heroes and senior Council officials.

A person who is admired for their courage, outstanding achievements, or noble qualities in the community can be declared a hero by the Mayor.

### CHAPTER X

**PAUPER BURIALS**

60. **Paupers and indigent burials**

60.1 A pauper is defined as a person who has died as an unknown person within the geographic boundaries of Council subject to Section 48(2) of the Health Act No. 63, 1977), as amended shall be buried or cremated at the discretion of Council.

(a) A pauper who is buried in a cemetery as determined by Council is interred three in a grave and without a headstone.

(b) An indigent person is defined as a destitute person who has died in indigent circumstances within the geographic boundaries of Council where no relative, other person, NGO or Welfare organisation can pay for the burial or cremation costs of the deceased person.

(c) The onus of proof of being indigent rests with the applicant’s declaration of indigence confirmed by the next of kin or representatives.

61. **Application for pauper / indigent burial from outside institutions**

Subject to the provision of the Inquests Act, 1959 and the said Births, Marriages and Deaths Act No. 51. Of 1992 a person who has died in a hospital or other institution shall be the responsibility of that hospital or institution save in the case who has been admitted to or kept in such a hospital or institution on order or on behalf of the local authority or in the case of a person who, not being a convicted person or a person under arrest, has died in any prison.

### CHAPTER XI

**FUNERAL UNDERTAKERS**

62. **Funeral Undertakers**

62.1 Subject to section 33 and 39 of the Health Act, 1977 (Act 63 of 1977) no undertaker shall contract to bury or cremate any body in any cemetery or crematorium under the control of the
Council unless:

(a) The undertaker is in possession of a certificate of competence.

(b) The premise from which the undertaker operates is zoned in accordance with planning for such a business.

(c) The requirements relating to a funeral undertaker, premises are in accordance with Act 63 of 1977.

(d) The premises are subject to inspection. Council reserves the right to refuse permission to any undertaker to undertake business in any cemetery or crematorium under its jurisdiction if such undertaker is not in compliance with these by-laws and if the undertaker is in default of any payment of tariffs.

(e) At funeral, the undertaker must supply, erect, operate and remove all lowering equipment using own labour.

(f) At certain circumstances, Council employees must help to close the grave if asked by the family of the deceased.

63. **Penalties**

Any person contravening any provision of these By Laws or failing to comply herewith or failing to comply with the conditions of any notice served on him by the Council in terms of the By Laws, shall be guilty of an offence and liable on conviction to a fine not exceeding R500 or three months imprisonment and, in the case of a continuous offence, to a fine not exceeding R100 per day for every day such offence is continued. In addition to such fine any cost incurred by the Council as a result of any contravention of any of the provisions of these by-laws or in the carrying out of any work prescribed by these By Laws to be carried out by any person and not carried out shall be paid by such person guilty of such contravention or failing to carry out such work.

CHAPTER XII

COSTS

64. **Fees**

(a) The prescribed fees to be paid to Council in terms of this By Law must be determined in terms of the City of Mbombela: Tariff By Law.

CHAPTER XIII

PRIVATE CEMETERIES, TRIBAL CEMETERIES AND CREMATORIUMS

65. **Duties of Proprietors**

65.1 The proprietor of a private cemetery or crematorium for which the consent of Council has been obtained must —

(a) comply with —
(i) any special conditions which may be determined by Council in respect of private cemeteries and crematoria from time to time; and

(ii) the relevant provisions of this By Law and any other applicable law;

(b) maintain the grounds, fences, gates, roads, paths and drains in good order and condition and clear of weeds and overgrowth;

(c) allow an authorised official of Council to enter or inspect the cemetery or crematoria and all records kept in connection therewith;

(d) appoint a suitably qualified person to manage the cemetery and to keep the records.

65.2 The owner of a private cemetery, a private crematorium, or private property may on reasonable grounds, refuse permission to have a corpse interred or cremated in the cemetery or crematorium.

CHAPTER XIV

GENERAL

(a) Council has the right to flatten any area on, or surrounding any grave including the grave mound three months after the burial has taken place.

(b) No person shall erect, place or leave upon a grave any object or decoration, during the first twenty-eight (28) days following the intern therein.

(c) Council is not responsible for any damage which may at any time occur to a memorial work and which is not due to the negligence of the authorised officials of Council.

66. Guidelines and Policies

Council may at any time develop guidelines and policies in respect of cemeteries, crematoria, funeral undertakers, any matter connected therewith, and any other matter regulated in terms of this By-law.

CHAPTER XV

USE AND CLOSURE OF DISUSED CEMETERIES

67. Use and Closure of Disused Cemeteries

67.1 Despite any provision of this By Law, and subject to the provisions of subsection (6), Council may use any cemetery or portion thereof, of which it is the cemetery authority, which has been disused for a period of not less than 20 years for such purpose as will not desecrate the ground and any human remains or any memorials in such cemetery.

67.2 Despite any provision of this By Law, and subject to the provisions of subsection (6), Council may close any cemetery or portion thereof, of which it is the cemetery authority, which has been disused for a period of not less than 20 years, or if good cause for such closure exists.
Despite any provision of this By-law, and subject to the provisions of subsection (6), Council may use as a cemetery any cemetery or any portion thereof, which has been used for another purpose in terms of subsection (1), or reopen any cemetery or portion thereof, which has been closed in terms of subsection (2).

Council may, subject to the provisions of subsection (6), remove to another cemetery the human remains, memorials and other structures from a cemetery of which it is the cemetery authority, which has been closed or disused for a period of not less than 20 years and which has been approved for other usage by the competent authority or authorities as the case may be.

All rights possessed or enjoyed by any person in respect of a cemetery contemplated in subsections (1) and (2) shall thereupon cease.

Before acting in terms of subsections (1), (2), (3) and (4) Council must give notice of its intention to do so.

**Repeal of by-laws**

The Cemetery By Laws published under Local Authority Notice No. A (28), dated 22 November 2008 as amended, are hereby repealed.