

DRAKENSTEIN MUNICIPALITY
DRAFT BYLAW RELATING TO CEMETERIES, CREMATORIA AND FUNERAL UNDERTAKERS,
2019

Under the provisions of section 156 of the Constitution of the Republic of South Africa, 1996 the Drakenstein Municipality, enacts as follows:

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1. Definitions

In this bylaw, words used in the masculine gender include the feminine, the singular includes the plural and vice versa, the English text shall prevail in the event of an inconsistency between the different texts, and, unless the context otherwise indicates:–

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

"approved" means approved by the municipality of Drakenstein;

"ashes" means the cremated remains of a body;

"ash grave" means a grave for the burial of cremated remains, with such grave covered by a memorial plaque or slab;

"authorised official" means the person whom the municipality appoints in a supervisory capacity regarding the management and control of cemeteries or crematoria and the implementation and enforcement of this bylaw;

"berm" means a concrete strip on which a memorial work, if any, is to be erected;

"berm section" means a grave section in a cemetery where memorial work is restricted to a headstone only with lawn planted over the length of the grave;

"body" means the dead body of a human being and includes-

- (a) the body of a still-born child;

(b) any human remains or body parts;

“burial” means burial in the earth or some other form of interment and shall include any other mode of disposal of a body;

“burial order” means an order issued in terms of the Births and Deaths Registration Act, 1992 (Act 51 of 1992);

“cemetery” means any burial place which, as contemplated in section 3, has been duly set apart by the municipality for the burial or disposal of bodies within the municipal area of Drakenstein;

“coffin” means any receptacle in which a body is kept for the purposes of burial or cremation of such body;

“communicable disease” means a disease resulting from an infection due to pathogenic agents or toxins generated by the infection, following the direct or indirect transmission of the agents from the source to the host;

“crematorium” means a building or place where bodies are cremated;

“cremation” means the process whereby a body is reduced by fire;

“cremated remains” means all recoverable ashes after the cremation;

“environmental health practitioner” shall mean a person in the employment of the Cape Winelands District Municipality, registered as such in terms of section 34 of the Health Professions Act, 1974 (Act 56 of 1974);

“exhumation” means the removal of a body from a grave within 30 days or burial of 5 years after burial;

“recycling of family graves” means the removal of remains from older family graves burying them deeper in the same grave and then reusing the space on top for a new family member of the same family;

“funeral undertaker” means any person, organisation or corporate body which undertakes the burial of bodies for gain;

“funeral undertaker's premises” has the meaning assigned to it in regulation 1 of the Regulations relating to the Management of Human Remains published per GN R363 of 22 May 2013;

“garden of remembrance” means a section of a cemetery set aside for the erection of memorial work, niche walls, the establishment of ash graves and the scattering of cremated remains;

"grave" includes any place, whether wholly or partly above or below ground level in which a body is permanently interred or intended to be permanently interred, whether in a coffin or other receptacle or not, and also includes any monument, tombstone, cross, inscription, rail, fence, chain, erection or other structure of whatsoever nature forming part of or appurtenance to such grave;

"hero" means a person who is conferred the status of a hero in writing by the municipality;

"hero's acre" means a grave section in a cemetery set aside by the municipality in a cemetery for the interment or commemoration of a hero;

"in-ground burial" means when land is excavated for the interment of a body;

"holder of reservation certificate" means a person to whom a certificate has been issued or transferred in terms of section 10;

"landscape section" means a section in a cemetery set aside by the municipality where memorial work is restricted to a horizontally placed plaque or a memorial slab, with lawn planted over the length of the grave;

"mausoleum" means an above-ground burial chamber to accommodate a body or a coffin with such chambers stacked vertically in varying forms and heights;

"memorial work" means any headstone, monument, plaque, other work or object, erected or intended to be erected to commemorate a deceased person, and includes a kerb demarcating a grave, a slab covering a grave and wooden, granite or marble steel crosses;

"municipality" means the municipality of Drakenstein established in terms of Section 12 of the Municipal Structures Act, 117 of 1998, and where the context so requires, any political structure, political office bearer, councillor, duly authorised agent thereof or any employee thereof acting in connection with this bylaw by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office bearer, councillor, agent or employee;

"municipal area" means the area of jurisdiction of Drakenstein Municipality;

"multiple burials" means subsequent interments in the remaining depth of a grave;

"niche" means a compartment in a structure in a cemetery designed for the placement of ashes;

"niche wall" means a wall or structure containing niches;

"promession" means the process whereby the body is disposed of by chemical induction agent (i.e. freeze drying);

"private cemetery" means land which is used as a cemetery but not owned by the municipality;

"re-use of grave" means the making of a grave available for a subsequent interment of the same family ~~after 5 years~~ and the disposal of bodies in any of the methods provided for in section 5 of this bylaw; and

"surface grave units" means an above-ground burial system which employs prefabricated burial chambers to accommodate the body and the coffin, with such chambers layered above the normal ground level.

2. Purpose and application

(1) The purpose of this bylaw is to-

- (a) provide for the establishment of cemeteries and crematoria for the disposal of dead bodies;
- (b) provide for procedures, methods and practices to regulate the burial, cremation and exhumation of bodies; and
- (c) provide for the provision of grave plots and the maintenance thereof;

(2) This bylaw shall be applicable to all cemeteries and crematoria which are the responsibility of the municipality within the municipal area of Drakenstein.

CHAPTER 1: ESTABLISHMENT, ADMINISTRATION AND CONTROL OF CEMETERIES AND CREMATORIA

3. Establishment and determination of fees

(1) The municipality may acquire, hold and alienate land for the purpose of establishing cemeteries and crematoria;

(2) The municipality may set aside cemeteries or any section thereof for the burial, cremation or any other method of disposal of the dead of any religious denomination or other body or community; provided that such setting aside will not vest in any person the right to be buried in any particular place in any cemetery; and

(3) The municipality may determine fees payable in respect of any of the services rendered in respect of cemeteries and crematoria.

4. Administration and control

- (1) Municipal cemeteries and crematoria shall be under the control of the municipality;
- (2) The City Manager may appoint an official to control and administer cemeteries and crematoria; and
- (3) The authorised official must consider the customs of the deceased person and the persons responsible for the burial and must accommodate these within the framework of this bylaw.

CHAPTER 2: DISPOSAL OF BODIES IN CEMETERIES

5. Methods of disposal of a body

Subject to the applicable provisions of this bylaw, and any other applicable law, a body may be disposed of by-

- (a) in-ground burial;
- (b) above-ground burial in accordance with policy which may be developed by the municipality in this regard;
- (c) cremation;
- (d) promession and biodegradable processes, in accordance with policy which may be developed by the municipality in this regard;
- (e) re-use of graves of the same family; and
- (f) re-cycling of same family graves.

6. Authority for burial

- (1) No person may bury a body or cause such body to be so buried within the municipal area other than in a cemetery;
- (2) A body may not be buried in a cemetery within the municipal area without permission of the authorised official;
- (3) The authorised official may at his or her own discretion allow the burial of a body without charge in that portion of a cemetery set apart for such purpose;
- (4) Permission for Muslim and Jewish burials shall not be given without a certificate (DHA-1663) stating the cause of death. This certificate must be provided to the authorised official before the burial take place; and

(5) Payment for Muslim and Jewish burials must be done within 48 working hours after the burial took place, provided that this provision shall not apply where a grave plot has been purchased in advance.

7. Hours of burial

No person may bury a body in a cemetery during the hours 16h30 and 09h00 except with the permission of the authorised official, who shall record the circumstances under which such permission is granted.

8. Hours of admission for public

(1) Each cemetery or crematorium shall be open for the public during the hours determined by the municipality and if it is regarded in the interest of the public, the municipality may close such cemetery or crematorium for such periods as deemed necessary;

(2) Where offices are operated within the cemeteries it shall be open during the hours as determined by the municipality;

(3) No person, excluding duly authorised workers or persons from the municipality, may be in or remain in a cemetery or part thereof before or after the hours when it is closed to the public as displayed in terms of subsection (1); and

(4) The authorised official must display the hours of admission to a cemetery of crematorium on a notice board at the entrance thereof.

9. Register of burials and cremations

The authorised official must keep a register of burials, cremations and graves, which register must be completed as far as possible immediately after a burial or cremation has taken place.

10. Demarcation of grave plots

(1) The municipality must demarcate grave plots in accordance with an approved layout plan; and

(2) Where a burial has been authorised upon application received from an organisation, an association, institution or the government, the plot allocated for such burial shall be reserved in the name of such organisation, association, institution or the government, as the case may be.

11. Ownership of a grave plot

No person shall acquire ownership of any grave plot reserved in terms of section 10(2) or acquire any right to or interest in any such grave plot or land in any cemetery other than such rights or interest as may be permitted under this bylaw.

12. Notice of burial

(1) No person may dispose of a body in contravention of the provisions of this bylaw, and a person who wishes to dispose of a body must obtain the prior written consent of the authorised official and must comply with such requirements as set out by the municipality herein;

(2) Except in urgent cases, the authorised official must be notified of any burial at least one working day before the time set for such burial, provided that for a burial on a Saturday, Sunday, Monday or public holiday, at least two working days' notice must be given;

(3) If a burial will take place on the day after a public holiday or a weekend, the requirement of two working days' notice shall also apply;

(4) Permission for burial may not be given without:

- (a) a burial order issued in terms of the Births and Deaths Registration Act 51 of 1992;
- (b) the death certificate of the body;
- (c) payment of the fees determined by the municipality;
- (d) an affidavit by the next of kin of the deceased, or where not practicable, any other close relative, consenting to the disposal of the body in the manner or cemetery section requested; and
- (e) a copy of the applicant's identity document and proof of address.

(5) If the grave plot has been reserved in terms of section 10(2), the certificate concerned must be produced in lieu of payment of the relevant fees;

(6) The notification contemplated in sub section (2) must contain the following information-

- (a) whether the person to be buried was suffering from a communicable disease;
- (b) whether such person had a pacemaker at the time of death;
- (c) details of cultural or religious practices that need to be adhered to; or
- (d) any other information the municipality may require; and
- (e) in the case of a funeral undertaker-
 - (i) the certificate of competence issued in terms of the relevant health legislation;

- (ii) proof of registration on the database of the municipality referred to in section 19 below; and
 - (iii) proof of annual registration with any federation or association of funeral undertakers and proof of payment of fees.
- (7) The authorised official must, as soon as possible, issue the necessary authority for such burial;
- (8) Should any alteration be made in respect of the day or hour previously fixed for a burial, or burial be cancelled, where the municipality is responsible for the digging of a grave, notice of the alteration must be given to the authorised official at the cemetery at least eight hours before the time fixed for the interment; and
- (9) The authorised official may refuse a person, including a funeral undertaker, permission to bury a body if the documentation referred to in sub sections (4), (5) and (6) have not been submitted prior to the burial.

13. Removal of monuments or structures

If it is necessary to remove a monument or other structure for the purpose of a burial, it must be removed by the holder of the certificate of reservation where applicable, in respect of such plot or by his or her duly authorised representative not less than two working days before the burial.

14. Identification of graves

Where a burial has been authorised in terms of section 6, the authorised official must number the plot allocated for such burial and no person may bury a body in a grave other than that allocated as such.

15. Dimensions of graves and grave plots

- (1) The excavation for a single grave for a deceased person of the age of twelve years or over shall be at least 1 500 mm deep, 2 200 mm long and 850 mm wide;
- (2) The excavation for a single grave for a deceased person under the age of twelve years shall be at least 1 300 mm deep, 1 200 mm long and 750 mm wide;

- (3) The extent of a grave plot for a deceased person of the age of twelve years or over shall be 2 500 mm by 1 500 mm; provided that in the case of a grave plot which is supplied with a berm, the width shall be reduced by 300 mm;
- (4) The extent of a grave plot for a deceased person under the age of twelve years shall be 1 500 mm by 1 000 mm;
- (5) The width of a kerb on any grave plot shall be 150 mm;
- (6) The extent of any double grave plot shall be double the extent of any single grave plot; and
- (7) Where a grave of a greater depth, length or width than specified is required, application in respect thereof, together with payment of an extra fee, as determined by the municipality, must be made when notice of burial is given.

16. Burials in one grave

- (1) More than one body of the same family may be buried in a single grave, provided that the lid of the coffin placed on top may not be less than 600 mm from the natural ground level, so that, in the event of the re-opening of the grave for the purpose of the burial of a further body, a layer of soil not less than 150 mm thick shall be left undisturbed above the coffin previously placed in the grave; and
- (2) If on the re-opening of any grave the soil is found to be unstable, offensive or unsafe, the reopening shall not be proceeded with and the grave shall be refilled.

17. Provision of graves

Subject to the provisions of section 16, the municipality shall provide graves for burial.

18. Religious ceremonies or services

- (1) No person may, without prior permission of the authorised official, conduct any religious ceremony in any portion of any cemetery which has been set apart by the municipality for the use of any other denomination;
- (2) Music and singing shall be permitted in a cemetery, provided that it may not be unduly loud or disturbing;
- (3) The authorised official must be informed of the nature of the music and singing to take place at a cemetery and his or her prior consent must be obtained;

(4) No person may cause any hearse to leave the roads in the cemetery, and every hearse must leave the cemetery as soon as possible after the funeral; and

(5) Every person taking part in a funeral procession or ceremony must comply with the directions of the authorised official as to the route to be taken within the cemetery.

19. Funeral undertakers

(1) A funeral undertaker that wishes to operate as such within the jurisdiction of the municipality must register on a database to be kept by the authorised official;

(2) A funeral undertaker, when registering on the database referred to in sub section (1), shall be required to sign a memorandum of understanding in which it is confirmed that he or she is familiar with all policies in terms of this bylaw;

(3) A funeral undertaker must transport a body in a roadworthy, closed vehicle, suitable for such purpose and which meets the requirements of applicable health legislation;

(4) The authorised official may, after written notice, cancel the registration of a funeral undertaker on the municipality's database, who does not comply with the provisions of this bylaw and may be prohibited to undertake further burials in cemeteries within the municipal area; and

(5) A funeral undertaker shall be responsible for all material and equipment necessary for the preparation and completion of a grave.

20. Wrongful burial

(1) If a body has been buried in contravention of this by-law, the municipality may, subject to the provisions of section 23, cause the body to be exhumed and re-buried in another grave, in which event the relatives of the deceased must be notified of the intended exhumation and reburial; and

(2) A re-burial must take place in the presence of a member of the SA Police Services as well as an environmental health practitioner from the Cape Winelands District Municipality.

21. Re-use of grave

(1) The municipality may exhume the remains of a body for the purposes of re-burial thereof and may dispose of the remains of that body in any of the methods provided for in section 5 of this bylaw, provided that:

- (a) any holders of private rights in that grave have given their consent; and
- (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 body has given consent.
- ~~(c) Unidentified grave plots, where no record exists of the corps, next of kin or any relative.~~

~~(2) Where the persons or next of kin referred to in subsection (1) are unknown or cannot be traced, the municipality shall have the right to proceed with the exhumation and re-burial after giving notice of its intention to do so in terms of a public participation process.~~

CHAPTER 3: EXHUMATION

22. Application for exhumation

An application for exhumation must be submitted to the authorised official, and must include-

- (a) the completed application form;
- (b) a copy of the death certificate;
- (c) an affidavit from the deceased's next of kin consenting to the exhumation;
- (d) a letter from an environmental health practitioner stating the conditions of the approval of the exhumation; and
- (e) payment of the prescribed fee.

23. Conditions of exhumation

(1) No person may exhume, disturb or cause a body to be exhumed, without the written consent of the municipality;

(2) An exhumation may only proceed when the conditions of the environmental Health practitioner have been complied with;

- (3) An exhumation may only take place within the first 30 days of burial or after 48 months after such burial, except in compliance with a court order from a competent court;
- (4) No exhumation or re-burial may proceed without the presence of-
 - (a) an environmental health practitioner;
 - (b) a registered funeral undertaker;
 - (c) the authorised official; and
 - (d) a member of the SA Police Services.
- (5) The remains of an exhumed body must be re-buried or cremated within 48 hours, unless the environmental health practitioner determines otherwise;
- (6) The remains of the exhumed body must, pending re-burial or cremation, be kept at a registered funeral undertaker's premises;
- (7) A Commonwealth war grave may only be exhumed in accordance with the provisions of section 3 of the Commonwealth War Graves Act, 1992;
- (8) The person carrying out the exhumation must provide a suitable receptacle for each body or remains;
- (9) Any person duly authorised to exhume a body in terms of subsection (1), must hand the order in respect thereof to the authorised official and must give at least eight working hours' notice of the date and time proposed for the exhumation of such body;
- (10) The grave from which any body is to be removed must, if the authorised official so requires, be effectively screened from view during the exhumation; and
- (11) The grave plot, after the exhumation, reverts to the municipality.

CHAPTER 4: ERECTION OF MEMORIAL WORKS

24. Erection of structures

- (1) No person may bring any material or stonework upon any grave, and no person may erect or place in position any tombstone, kerbing, or monument or any structure whatsoever on any grave, unless-
 - (a) the grave plot has been reserved in the name of the person authorising such work;
 - (b) all fees due in respect of such work have been paid;
 - (c) approval for the erection has been granted by the authorised official; and
 - (d) after a period of 12 months of the burial

(2) The following information must be submitted to the authorised official at least 30 days prior to the proposed erection of any structure:

- (a) a plan depicting its measurements and its position;
- (b) specifications of the material of which the memorial work is to be constructed; and
- (c) the wording of the epitaph.

(3) The authorised official may approve the application and impose the conditions he or she may deem necessary or refuse the application if it does not comply with the municipality's requirements;

(4) The approval for the proposed work is valid for a period of ~~six (6) months~~ twelve (12) months from the date on which it is given, after which a new application must be submitted.

(5) The authorised official may refuse to approve any proposed work regarding a memorial work or monument, if the plan and specifications reveals that it will disfigure any cemetery, or which bears any epitaph which may offend any person; and

(6) The authorised official shall have the right to alter the position of the structure and to recover the costs of the alteration from the person who erected the structure where subsection (1) is not complied with.

25. Requirements for erection of memorial works

(1) A person erecting a memorial work must comply with the following:

- (a) he or she must be in possession of a plan approved in terms of section 24;
- (b) all work must be affected according to the conditions contemplated in section 24;
and
- (c) no damage may be caused to any other structure.

(2) With the applicant's permission, the name of the maker may be displayed on a memorial work, but no address or any other particulars may be added thereto, and the space utilised therefor may not be larger than 40 x 100 mm;

(3) All unused material after the completion of the work must be removed, and the adjoining areas are to be left neat and clean;

(4) Any damage caused must be repaired by the person responsible for such damage and should the responsible person fail to affect such repair after due notice, the municipality will undertake the remedial work at the cost of such person;

(5) No person may convey any stonework or brickwork or monuments or any portion thereof within any cemetery upon any vehicle or truck which is not fitted with wheels having pneumatic tyres;

(6) No person engaged in work in connection with any memorial work or monument may at any time disturb any adjacent grave plot or, on completion of the work, leave the grave plot before it is in a clean and tidy condition;

(7) All work in connection with a monument must be in accordance with the drawing and specification approved in terms of section 24 and under supervision of the authorised official.

(8) Any person carrying out any work in connection with any memorial work must comply with the following provisions –

- (a) the various parts of any memorial work, other than masonry, must be affixed by copper or galvanised iron dowel pins of a length and thickness sufficient to ensure the permanent stability of the work;
- (b) any part of such work which rests upon any stone or other foundation shall be squared and pointed;
- (c) the underside of every flat memorial work made of stone and the base or foundation of every monument or headstone must be set at least 50 mm below the natural level of the ground and the headstone must be securely attached to the base;
- (d) the base must consist of one solid piece in the case of a single grave plot;
- (e) all kerbing or monuments on single grave plots must be erected on concrete foundation at least 610 mm wide and 205 mm deep over the full width;
- (f) all kerbing on plots larger than single grave plots must be fixed to a solid concrete surface at the four corners and wherever joints occur;
- (g) the municipality may require any concrete foundation on any grave plot to be reinforced where, owing to the mass of the monument or headstone, it is necessary in the interests of safety;
- (h) no person may erect any memorial work unless the number and section letter of the plot upon which such work is to be placed are indelibly engraved thereon in such a position as to be legible at all times from a pathway;
- (i) with the consent of the registered certificate holder, the name of the maker of such memorial work may appear on the base;

- (j) no memorial work or material may be brought into a cemetery and no work in connection with a memorial work may be undertaken from 12:00 on a Friday until the opening hour of the cemetery on the following Monday;
- (k) work undertaken in connection with memorial work may not disturb or intrude upon a funeral;
- (l) memorial work may not be fixed or placed while the soil is in unstable condition; and
- (m) any person carrying out work within any cemetery must in all matters comply with the directions of the municipality and must upon demand by the authorised official, produce the written approval as referred to in section 26(3).

26. Position, movement and removal of memorial work

- (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 referred to in section 24;
- (2) The authorised official shall have the right to alter the position of the memorial work and to recover the costs of the alteration from the person who erected the memorial work where subsection (1) is not complied with;
- (3) The authorised official may, after due notice, at any time change or alter the position of a memorial work in a cemetery and recover the cost thereof from the owner of the memorial work; and
- (4) The unveiling of a memorial stone on the day of the burial is permitted. The memorial stone must be removed after the burial.

27. Damaging of memorial work

The municipality shall not be liable for loss of or damage to a memorial stone, monument or article placed upon a grave plot which may occur at any time from any cause whatsoever, nor for compensation in respect of a memorial stone or monument repaired or removed in terms of section 26.

28. Maintenance of memorial work

- (1) Any memorial work or monument erected upon any grave must always be maintained in good order and condition by the holder of the reservation certificate in respect of such grave;
- (2) If any such memorial work or monument is allowed to fall into a state of disrepair or to constitute a danger or to disfigure the cemetery, the authorised official may, by written notice to the holder of the reservation certificate, require him or her to affect such repairs as may be necessary;
- (3) Upon failure to comply with the notice within the time specified in such notice, the authorised official may take the necessary steps to affect the necessary repairs or maintenance, or may have the memorial work removed, and recover the expense of such repairs or removal from the holder of the reservation certificate;
- (4) Any memorial work dismantled for the purpose of a further burial must be removed from the cemetery by the holder of the reservation certificate within two months of date of such dismantling. If it is to be re-erected, it must be done within the said period of two months; and
- (5) Upon failure to comply with sub section (4), the authorised official shall be entitled to remove any such dismantled memorial work or monument from the cemetery and recover the cost of such removal from the holder of the reservation certificate.

CHAPTER 5: SECTIONS IN A CEMETERY

29. Municipality may establish sections

The Municipality may establish one or more of the following sections in a cemetery:

- (a) monumental section;
- (b) berm section;
- (c) landscape section;
- (d) heroes acre;
- (e) garden of remembrance;
- (f) surface grave units' section;
- (g) mausoleum section; and
- (h) denominational section.

30. Monumental section

- (1) A monumental section is a grave section in a cemetery set aside for the erection of memorial work at graves; and
- (2) Flowers, foliage, wreaths or any adornment may be placed upon the berm only of graves, except in the case of graves which have not yet been levelled.

31. Berm section

- (1) Headstones in a berm section must be erected on the concrete plinth and may contain two receptacles for flowers;
- (2) Alternatively, a suitable foundation to support the headstone, which must be embedded horizontally at ground level in the position indicated by the authorised official, may be provided; and
- (3) A grave plot which is supplied with a berm shall be subject to the following:
 - (a) no kerb or frame demarcating the grave or a slab covering is permitted;
 - (b) the base of a memorial work may not be larger than 610 mm by 260 mm; provided that the base of a memorial work which is erected over two adjoining grave plots may be 1 220 mm by 260 mm; and
 - (c) a memorial work may not protrude beyond the base and must be at least 120 mm from the front edge of the berm.

32. Landscape section

- (1) The following shall apply in a landscape section-
 - (a) no object other than a plaque or memorial slab may be placed on a grave; and
 - (b) no kerb or frame demarcating the grave or a slab covering is permitted.
- (2) The authorised official may in the course of time level all graves and plant grass thereon; and
- (3) Flowers, foliage, wreaths or any adornment may be placed only upon the berm of graves, except in the case of graves which have not yet been levelled.

33. Heroes acre

No person may be interred in this section unless the status of a hero has been conferred by the municipality.

34. Garden of remembrance

- (1) A garden of remembrance is a section in a cemetery set aside for the erection of memorial walls, niche walls, the establishment of ash graves and the scattering of cremated remains; and
- (2) Flowers and wreaths may be placed only on the places provided therefore.

35. Surface grave units' section

- (1) A surface grave units' section may be established in a cemetery in which bodies are interred in surface grave units; and
- (2) The municipality may formulate policy in respect of surface grave units, the burial of bodies in modular surface grave units and the erection of memorial work in such section.

36. Mausoleum section

The municipality may formulate policy in respect of mausoleum, the burial of bodies in mausoleum and the erection of memorial work in the mausoleum section.

37. Denominational section

The municipality may set aside designated areas in its cemeteries for the exclusive use of a specific faith, religious or cultural group where the burial requirements of such group dictates a physical arrangement of graves with reference to orientation, density and depth, provided that the allocation of such a section may not be to the detriment of the burial requirements of the general residents of the municipality.

CHAPTER 6: CREMATORIA

38. Application for cremation

- (1) An application for cremation must be made to the authorised official upon such terms and upon payment of such fees as determined by the municipality; and
- (2) A cremation may only be undertaken with the permission of the authorised official.

39. Cremation

- (1) Where application has been made for cremation, the applicant or his or her representative must provide bearers for the purpose of carrying the coffin into the crematorium;
- (2) Where a member of the public desires to be present in a crematory, a request to that effect must be made to the authorised official;
- (3) Cardiac pacemakers or radio-active implants of any kind or any other material which may result in an explosion or harmful emissions when incinerated, must be removed before cremation; and
- (4) A crematorium shall be fitted with equipment in order to prevent the dispersion of ash into the atmosphere.

40. Coffins for cremation

- (1) When cremated a corpse must be contained in a coffin;
- (2) A coffin in which a corpse is cremated shall be made of natural wood or non-toxic material or any other material as prescribed by the municipality;
- (3) No toxic varnish, paint or glue shall be utilized in the manufacturing of a coffin in which a corpse is cremated;
- (4) When cremated, a coffin may only contain combustible material, including clothing, shoes and other adornments of whatever nature;
- (5) Before a cremation is permitted to take place, the applicant or his or her representative shall be obliged to produce a certificate that the coffin complies with subsections (2) to (4); and
- (6) No corpse may be removed from a coffin for the purpose of incineration and a coffin may not be opened in the crematorium except by the authorised official for purposes of inspection of the contents.

41. Requirements for memorials and memorial work at crematoria

- (1) The municipality may provide –
 - (a) buildings, niches or other facilities for the deposit and preservation of ashes for definite periods or in perpetuity upon such terms and conditions as may be determined by the municipality;

- (b) facilities for memorial tablets of approved material, upon such terms and conditions as may be determined by the municipality; and
 - (c) gardens for the scattering or burial of ashes, which gardens may be known as Gardens of Remembrance.
- (2) All inscriptions on niches, memorial tablets or in books of remembrance must comply with general standards of decency and must not be of such a nature to offend the feelings of the public;
- (3) No person may—
- (a) open a niche containing ashes, or
 - (b) remove an urn or casket containing ashes from a niche;
- without the permission of the authorised official, which shall not be unreasonably withheld.
- (4) If ashes are buried in a grave in a container, such container must be constructed of perishable material;
- (5) Only urns or caskets containing ashes may be deposited in a niche;
- (6) No person may place wreaths, sprays, flowers or floral tributes in the columbaria or in their grounds; and
- (7) The municipality or its employees will not be liable for any damage to or theft from niches, urns, memorials or any other embellishments thereon within a crematorium under its control.

42. Disposal of ashes

- (1) Ashes must be disposed of as requested by the applicant for cremation or his or her representative;
- (2) Directions as to the disposal of ashes must be given by the applicant or his or her representative at the time of application for cremation; and
- (3) If there are no express arrangements for burial or safekeeping, the authorised official may bury or scatter the ashes in a garden of remembrance.

CHAPTER 7: GENERAL PROVISIONS RELATING TO CEMETERIES AND CREMATORIA

43. Entry by children

No person under the age of twelve years may enter any cemetery or crematorium unless he is in the care of an adult.

44. General prohibitions

(1) No person may-

- (a) enter or leave any cemetery or crematorium except by the gates or doors provided for that purpose;
- (b) enter any office or enclosed place in any cemetery except on lawful business;
- (c) carry on any trade or solicit any business, or exhibit, distribute or leave any business card or advertisement, within any cemetery or crematorium, except on sites specifically determined and set apart for such purposes;
- (d) use any part of a cemetery or crematorium, or any road or footpath therein for hawking or conducting of any other business without the written consent of the authorised official;
- (e) bring any animal into any cemetery or crematorium without the permission of the authorised official; with the exception of-
 - (i) a blind person accompanied by a guide dog; and
 - (ii) the authorised official, living on site and who is keeping pets with the prior approval of the municipality.
- (f) ride an animal, cycle, or skateboard or partake in any other form of recreational or sporting activity within any cemetery, unless otherwise determined by the authorised official;
- (g) obstruct, resist or oppose the authorised official or any employee of the municipality in the course of his duty, or refuse to comply with any order or request which the authorised official or employee may give or make under this bylaw;
- (h) destroy or damage any grave, tombstone, monument, wall, building, fence, railing or other structure or any road in any cemetery or crematorium or mark or draw or erect any advertisement, bill or placard upon or in any other way deface any grave,

tombstone, monument, wall, building, fence, railing or other structure or any road in any cemetery or crematorium;

- (i) disturb the soil, or plant or uproot any plant, shrub or flowering plant, or in any way interfere with any grave or structure in any cemetery or crematorium;
- (j) plant, cut, pick, interfere with or remove a tree, plant, shrub or flower without the permission of the authorised official;
- (k) without the prior permission of the authorised official plant any tree, shrub, bush or any other plant on any grave plot, nor shall any such tree, shrub, bush or plant be planted upon any portion of such plot other than that indicated by the authorised official and for these purposes, he or she shall be entitled to prune, cut down or remove any shrub, plant, flower or tree in a cemetery and the municipality shall not be liable to any person who may suffer damages as a result of such pruning or removal;
- (l) play any game or take part in any sport in a cemetery;
- (m) fire any firearm, except as a salute in a military funeral, or discharge any airgun or catapult in a cemetery;
- (n) leave or deposit any rubbish, loose soil, stone or other debris within a cemetery or crematorium other than at a place provided for that purpose;
- (o) overnight in, trespass on or enter and remain in any cemetery unless for the purposes of a burial or visiting a grave in such cemetery;
- (p) use a cemetery or crematorium, or any road or footpath therein, for the conveyance of goods, parcels or other materials or as a thoroughfare or short cut;
- (q) play or perform any music in a cemetery or crematorium without the permission of the authorised official;
- (r) hold or take part in any demonstration for any purpose in a cemetery or crematorium without the prior consent of the authorised official;
- (s) enter and drive in a cemetery with a vehicle except in accordance with the terms and conditions determined by the authorised official;
- (t) bring intoxicating liquor or any dependence-producing substance into a cemetery or crematorium, or be in possession of such liquor or dependence-producing substance in a cemetery or crematorium, without the consent of the authorised official;
- (u) expose or convey a body in an unseemly manner in a cemetery;

- (v) disturb or cause a nuisance to any person lawfully present in a cemetery or crematorium;
 - (w) knowingly make a false statement under this bylaw or wilfully conceal any fact or document required by this bylaw; or
 - (x) use water for any form of gardening without the permission of the authorised official; and
 - (y) light or maintain any fire in a cemetery.
- (2) No holder of a reservation certificate may allow any shrub, bush or plant to overhang or extend beyond the boundaries of such grave plot.

45. Driving in a cemetery

A driver of a vehicle must keep to the paths indicated in a cemetery, where such paths exist and must drive in an orderly and dignified manner.

46. Work by municipal employees

No employee of the municipality may undertake any work in a cemetery, such as maintaining or digging a grave or any other related work on behalf on any other person.

CHAPTER 8: PRIVATE CEMETERIES

47. Application of bylaw

The provisions shall apply with the necessary amendments to private cemeteries.

48. Establishment of private cemeteries

- (1) No person may, without the municipality's consent, establish a private cemetery, and no owner of a private cemetery already in existence may, if the use of the cemetery was not previously authorised by the municipality, continue to use the existing cemetery for burial purposes; and
- (2) An application for consent to establish a cemetery or use a cemetery as contemplated in subsection (1), must be submitted to the municipality together with:
- (a) a locality plan to a scale of not less than 1:10 000 which shows:

- (i) the position of the proposed cemetery or existing cemetery in relation to the boundaries of the land on which it is proposed or upon which it is situated, as the case may be;
 - (ii) the registered description of the site; and
 - (iii) all streets, public places and privately-owned property within 500 metres of the site;
- (b) a "block" plan to a scale of not less than 1: 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 not less than 1: 100 of any building existing or proposed to be erected;
 - (d) a register or records kept or proposed to be kept with reference to:
 - (i) identification of graves;
 - (ii) sale of grave sites, transfer of grave sites;
 - (iii) burials; and
 - (d) the full name and address of the owner.

49. Duties of owners

- (1) The owner of a private cemetery must comply with:
 - (a) any special conditions which may be prescribed by the municipality;
 - (b) the relevant provisions of this bylaw and any other applicable law;
 - (c) maintain the grounds, fences, gates, roads, paths and drains in good order and condition and clear of weeds and overgrowth;
 - (d) allow an official of the municipality to enter or inspect the cemetery and all records kept in connection therewith; and
 - (e) appoint a suitably qualified person to manage the cemetery and to keep the records.
- (2) The owner of a private cemetery or private property may on reasonable grounds refuse permission to have a body buried in the cemetery.

CHAPTER 9: UNUSED CEMETERIES

50. Use of unused cemeteries

- (1) Notwithstanding any provision of this by-law, and subject to the provisions of subsection 4, the municipality may use any cemetery or portion thereof, of which it is the cemetery authority, which has not been used 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;
- (2) The municipality may, subject to the provisions of subsection 4, remove to another cemetery the human remains, memorials and other structures from a cemetery of which it is the cemetery authority, which has not been used for a period of not less than 20 years;
- (3) All rights possessed or enjoyed by any person in respect of a cemetery contemplated in subsections 1 and 2 shall cease when acted in terms of this section; and
- (4) Before acting in terms of subsections 1, and 2, the municipality must give notice of its intention to do so in terms of a public participation process.

CHAPTER 10: GENERAL PROVISIONS

51. Authentication and service of order, notice or other document

- (1) An order, notice or other document requiring authentication must be signed by the municipality;
- (2) Any notice or other document that is served on a person in terms of this bylaw, is regarded as having been served when it is served in accordance with section 115(1) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);
- (3) Service of a copy shall be deemed to be service of the original; and
- (4) Any legal process is effectively and sufficiently served on the municipality when it is delivered to the city manager or a person in attendance at the City Manager's office.

52. Appeal

A person whose rights are affected by a decision delegated by the municipality may appeal against that decision by giving written notice of the appeal and the reasons therefore in terms of section 62 of the Local Government: Municipal Systems Act (Act 32 of 2000) to the city manager within 21 days of the date of the notification of the decision.

53. Offences and penalties

A person who –

- (a) contravenes or fails to comply with the provisions of sections 6, 7, 8, 12, 18, 19, 23, 24, 25, 26, 33, 38, 39, 40,41, 43, 44, 45, 48 and 49 of this bylaw;
- (b) contravenes or fails to comply with any requirement set out in a notice served on him in terms of this bylaw;
- (c) contravenes or fails to comply with any condition imposed in terms of a notice in terms of this bylaw;
- (d) hinders or interferes with the authorised official or other employee of the municipality in the execution of his or her duties; and
- (e) knowingly makes a false statement in respect of any application in terms of this bylaw, commits an offence and on conviction shall be liable to:
 - (i) a fine or imprisonment, or to both such fine and such imprisonment; and
 - (ii) a further amount equal to any costs and expenses found by the court to have been incurred by the municipality as result of such contravention or failure.

54. Exemptions

- (1) Any person may by means of a written application apply to the municipality for exemption from any provision of this bylaw;
- (2) The municipality may:
 - (a) grant an exemption in writing and the conditions and the period for which such exemption is granted must be stipulated therein;
 - (b) alter or cancel any exemption or condition in an exemption; or
 - (c) refuse to grant an exemption.
- (3) An exemption does not take effect before the applicant has undertaken in writing to comply with all conditions imposed by the municipality under subsection (2); however, if an activity is commenced before such undertaking has been submitted to the municipality, the exemption lapses; and
- (4) If any condition of an exemption is not complied with, the exemption lapses immediately.

55. Transitional arrangements

(1) Anything done under or in terms of any provision of the bylaw repealed by this bylaw shall be deemed to have been done under the corresponding provisions of this bylaw and the repeal in section 56 shall not affect the validity of anything done under the bylaw so repealed;

(2) The reservation of grave plots done in terms of the bylaw hereby repealed, shall remain valid, provided that the holder of such reservation shall re-confirm reservation with the authorised official every 5 years from the date of commencement of this bylaw; and

(3) Failure by the holder of a reservation to re-confirm reservation in terms of subsection (2), shall result in the re-allocation of such grave plot by the authorised official.

56. Repeal of by-laws

The Drakenstein Municipality Bylaw Relating to Cemeteries and Crematoria, 2/2007, promulgated in Provincial Gazette 6426 dated 16 March 2007, is hereby repealed.

57. Short title and commencement

This bylaw may be cited as the Drakenstein Municipality: Bylaw relating to Cemeteries, Crematoria and Funeral Undertakers, 2019 and commences on the date of publication thereof in the Provincial Gazette.