

By-law on funeral parlours, cemeteries and crematoria



Dr JS Moroka Local Municipality DR JS MOROKA LOCAL MUNICIPALITY FUNERAL PARLOURS, CEMETERIES AND CREMATORIA BY – LAWS

UNDER THE PROVISIONS OF SECTION 156 OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 (ACT 108 OF 1996), THE DR JS MOROKA LOCAL MUNICIPALITY, ENACTS AS FOLLOWS:-

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1. Definitions

In these By Law, unless the context otherwise indicates –

“Adult” (where the word is used to define a body) means a deceased person whose coffin will fit into the grave opening prescribed for adult in this By - Law;

“Aesthetic section” means a cemetery or section of a cemetery which has been set aside by the Council wherein a headstone may only be erected and strips of garden will be provided by the Council;

“Berm” means a concrete base laid by the Council at the head of a grave’ in the aesthetic section;

“Body” means the remains of a deceased person and includes a still-born child;

“Burial” means burial in earth or any other form of sepulture and includes the cremation or any other mode of disposal of a body;

“Burial order” means an order issued in terms of the Births and Deaths Registration Act, 1992 (No. 51 of 1992) (**“the BDRA”**);

“Caretaker” means the official whom the Council appoints from time to time in a supervisory capacity with regard to the cemetery;

“Cemetery” means a land or part thereof within the Municipality duly set aside as a cemetery by the Council in consultation with the Traditional Authority

“Child” (where the word is used to define a body) means a deceased person whose coffin will fit into the grave opening prescribed for children in this by-law;

“Columbarium” means a structure containing rows of niches for the purpose of placing receptacles containing the ashes of cremated bodies therein;

“Contractor” means: the person who has paid or caused any of the charges prescribed in the tariff to be paid or who has obtained any of the right set out in these by-laws or who has obtained the right to have a memorial work erected or constructed or who has obtained any other rights or interests referred to or mentioned in these by-laws.

- b) a structure or person exercising a delegated power or carrying out an instruction, where any power in these by-laws has been delegated or sub-delegated, or an instruction given, as contemplated in Section 59 of the local Government: municipal systems act, 2000 (Act 32 of 2000); or
- c) A service provider fulfilling a responsibility under these by-laws assigned to it in terms of Section 81(2) of the Local Government: Municipal Systems Act ("**MSA**"), or any other law, as the case may be;

"Cremation" means the process whereby a body is disposed of by fire;

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

"Cremated remains" means all recoverable ashes after the cremation;

"Exhumation" means the removal of a body from its grave;

"Funeral undertaker's premises" has the meaning assigned to it in Regulation 1 of the Regulations to the BDRA (as published by the Minister of Home Affairs in Government Gazette Notice No. 37373 on 26 February 2014, No. R. 128) ("**the BDRA Regulations**");

"Garden of remembrance" means a section of a cemetery or crematorium set aside for the erection of memorial work or a wall of remembrance;

"Grave" means a piece of land, within a cemetery or heritage site, excavated for the burial of a body and includes the headstone, number or marker of and a structure on or associated with the grave;

"Heroes acre" means an area of land set aside for the burial of a hero;

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

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

"Memorial work" means any headstone, monument, plaque, other work or object, erected or intended to be erected in a cemetery or crematorium to

commemorate a deceased person, and includes a kerb demarcating a grave, and a slab covering a grave;

"Niche" means a compartment in a columbarium or wall of remembrance for the placing of ashes;

"Ordinance" means the crematorium ordinance, 1965 (Ordinance No. 18 of 1965);

"Panoramic section" means a section in a cemetery set aside by the Council where memorial work is restricted to a plaque or memorial slab;

"Prescribed" means prescribed by the Council;

"Prescribed fee" means a fee determined by the Council by resolution in terms of section 10G(7)(a)(ii) of the Local Government Transition Act, 1993 (Act 209 of 1993), or any other applicable legislation;

"Regulations" means the funeral undertakers' premises, made under Sections 33 and 39 of the Health Act, 1977 (Act 63 of 1977) (published as Government Notice No. 237 of 8 February 1985);

"Tomb" means an above ground burial vault;

"Wall of remembrance" means a structure (in a cemetery) which contains niches in which urns containing ashes can be stored.

(2)

"Tariff" means the prescribed charge determined by the Municipal Council in terms of any applicable legislation for any service rendered by the Municipality in terms of these By-Laws;

Commented [MM1]: Define in terms of Tariff Policy

"Indigent"

Commented [MM2]: To be defined in terms of the indigent Policy

2. Preamble WHEREAS:

- (a) The Council, acting under the power granted to it by the national ,provincial legislation and the regulations made under Sections 33 and 39 of the Health Act, 1977 (Act 63 of 1977), and aware of the dignity of its residents and the need to preserve that dignity,

- (b) and aware that a body is to be granted respect, and that all its residents have the right and the duty to inter a body in a cemetery or to cremate a body in a crematorium, hereby adopts these by-laws:

3. objectives

- (a) To control funeral undertaker's premises,
- (b) To make provision for the allocation of and for the purposes of the burial of human remains, to develop and maintain existing cemeteries,
To permit its residents to dispose of a body by cremation and to provide space allowing the preservation of the remains of a cremation in a dignified manner.

4. Application of By-laws

- (a) These By-laws, which are informed by the Municipality's adopted policy on funeral Parlours, cemeteries and crematoria, apply to all funeral undertakers' premises and to cemeteries, crematoria and other places of burial as determined by the Council, within the Dr JS Moroka Local Municipality area, and to persons making use of such funeral undertakers, cemeteries, crematoria and other place of burial.

5. Legislation specifically referred to

These By-laws refer specifically to, are regulated by and are informed by the:-

- (1) Inquest Act, 1959 (Act 58 of 1959);
- (2) Health Act, 1977 (Act 63 of 1977); as amended ("**the Health Act**")
- (3) National Building Regulations and Building Standards Act, 1977 (Act 103 of 1977);
- (4) Human Tissue Act, 1983 (Act 65 of 1983);
- (5) Births and Deaths Registration Act, 1992 (Act 51 of 1992) ("**the BDRA**"); as amended
- (6) Local Government Transition Act, 1993 (Act 209 of 1993); and
- (7) Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) ("**the MSA**").
- (8) The Cemeteries, Crematoria and Exhumation of Bodies Act 2005 (Mpumalanga Provincial Gazette No. 1397, 27 December 2006) ("**the CCEBA**").
- (9) National Prosecuting Authority Act?
- (10) Paupers Burial Act?

6. Establishing Cemeteries

(1) The Council may set aside land within its jurisdictional area for the purposes of establishing cemeteries and/or crematoria in accordance with the provisions of the Cemetery Crematoria and Exhumation of Bodies Act.

(2) CHAPTER 1: FUNERAL UNDERTAKERS' PREMISES

7. Applicable legislation

The National Building Regulations and Building Standards Act, 1977, CCEBA and Provincial Cemeteries By – Laws apply in respect of funeral undertaker's premises and as such, shall not be extrapolated upon in this By - Law

8. Enforcement of Chapter 1

(1) The Council, in order to reduce a public health hazard or eliminate a public health hazard, may issue such order or notice or undertake such remedial work as the Council may deem necessary as per Sections 33 and 34 of the Health Act, the applicable regulations thereto and further applicable national and provincial legislation.

(2) The medical officer of health and such other person as the Council may or must appoint in accordance with, or who is empowered to act by any other law, are the officials responsible for the implementation of this chapter, and have such power as granted in such law, and the Council may furthermore grant other power to an official as the Council may deem necessary from time to time.

CHAPTER 2: GENERAL PROVISIONS RELATING TO CEMETERIES AND CREMATORIA

9. Appointment of caretaker

(1) The Council must appoint a caretaker for each cemetery or crematorium to control and administer the cemetery or crematorium.

(2) The caretaker must take into account the customs of the deceased person and the people responsible for the burial or cremation and must accommodate these to the extent legally permissible and reasonably possible, within the framework of these By-laws.

10. Hours of admission for public

- (a) Every cemetery is open to the public during the following hours: 08h00 and 16h00, however, if it is in the interest of the public, the Council may close to the public a cemetery or crematorium or part thereof for such periods as the Council deem necessary.
- (b) No person, excluding workers or persons with permission may be in or remain in a cemetery or crematorium or part thereof before or after the hours mentioned in sub-section (a) or during a period when it is closed to the public.

11. Children

- (a) No child under 12 years of age may enter a cemetery or crematorium unless he or she is under the care of a responsible person.

12. Keeping to path

- (a) Except for purposes permitted by these By-law, a person may only use a path provided in the cemetery **.13. Prohibited conduct within cemetery and crematorium**

(1) No person may:-

- (a) Commit or cause a noise or nuisance within a cemetery or crematorium;
- (b) Ride an animal or cycle within a cemetery or crematorium;
- (c) Bring or allow an animal to wander inside a cemetery or crematorium;
- (d) Plant, cut, pick or remove a tree, plant, shrub or flower without the permission of the caretaker;
- (e) Hold or take part in a demonstration in a cemetery or crematorium;
- (f) Interrupt during the performance of his or her duties, an official, workman or labourer employed by the Council in a cemetery or crematorium;
- (g) Obstruct, resist or oppose the caretaker in the course of his or her duty or refuse to comply with an order or request which the caretaker is entitled under these By-law to make;

- (h) Use a cemetery or crematorium for an immoral purpose;
 - (i) Mark, draw, scribble, erect an advertisement or object on a wall, building, fence, gate, memorial work or other erection within a cemetery or crematorium;
 - (j) Use water for any form of gardening without the permission of the caretaker;
 - (k) Plant trees, flowers or shrubs on or between graves;
 - (l) Leave any rubbish, soil, stone, debris or litter within the cemetery or crematorium;
 - (m) In any way damage or deface any part of a cemetery or crematorium or anything therein contained within the cemetery;
 - (n) Enter or leave a cemetery or crematorium, except by an entrance provided for the purpose of same;
 - (o) Solicit any business, order or exhibit, or distribute or leave a tract, business card or advertisement within a cemetery or crematorium;
 - (p) Treat a grave or memorial work with disrespect, such as climbing or sitting on a grave or memorial work;
 - (q) Enter an office, building or fenced place in a cemetery or crematorium, except in connection with lawful purpose;
 - (r) With the exception of a blind person, bring an animal into a cemetery or crematorium; and
 - (s) Expose a body or a part thereof in a cemetery or crematorium.
- (2) Any animal found in a cemetery or crematorium in circumstances other than as deemed to be permissible in terms of these By – Laws, may, at the reasonable discretion of the Council and/or of the officials delegated with the authority to exercise such discretion, *inter alia* in accordance with the applicable provisions of the Animal Protection Act (No. 71 of 1962), without paying any compensation to the owner/s thereof.

- (3) To the extent that any such animal is impounded and/or injured and/or euthanized and/or comes to any harm whatsoever whilst in a cemetery or crematorium, the Council is exempted from any liability and obligation to compensate the owner/s thereof.

13. Right of interest in ground

- (1) No person shall acquire any right to or interest in any ground or grave in a cemetery, other than such rights or interests as may be obtainable under these By-law and any other applicable legislation.

The Council may on payment of the prescribed fee, sell to a person the use of a grave in a section of a cemetery for a prescribed period.

- (a) The Council may set aside different areas in a cemetery for exclusive use by different religious or cultural groups, taking into consideration the customs or religious conventions of such groups.

- (b) The Council may launch an awareness campaign regarding the use of land for burial purposes, whereby the environmental advantages of cremation as an alternative to burial is stressed.

CHAPTER 3: GENERAL PROVISIONS RELATING TO BURIAL AND CREMATION

14. Disposal of a body

- (1) A body may only be disposed of within the jurisdiction of the Council by way of either burial within a cemetery or by way of cremation in a crematorium which is recognized by the Council, unless otherwise authorized by any other law which is not in conflict with this By – Law and the legislations, ordinances and regulations regulating same.

15. Consent required for burial and cremation

- (1) No person may dispose-off a body in any other manner than by burying it in a cemetery or having it cremated in a crematorium, and a person who wished to dispose-off a body must obtain the written consent of the Municipal Manager before he or she disposes the body.
- (2) A person who wishes to obtain the consent as contemplated in subsection (1) must submit to the caretaker at the applicable offices where the intended burial and/or cremation is to take place, an application in writing a form similar to the form in schedule 1 together with –

- (a) The fee prescribed as may be determined by the Council from time to time.
- (b) A death certificate;
- (c) A burial order issued in terms of the BDRA; and
- (d) A proposed time and date for the burial and/or cremation,

And the Municipal Manager may not approve the application unless all of the above requirements are met.

- (3) As far as the date and time of the proposed burial and/or cremation, same must be arranged and consented to by the Municipal Manager, which such consent may not be unreasonably withheld.
- (4) An application must be submitted to the Municipal Manager, in respect of –
 - (a) A burial where the Council is responsible for the digging of the graves, not later than 15:00 on the day before the intended burial or, where the grave exceed the standard size, not later than 15:00 two days before the intended burial; and
- (5) In the event that a burial and/or cremation is required to take place in accordance with Muslim and/or Jewish and/or similar religious rites, such application must be submitted on the first working day after the burial of the body.
- (6) Should any alteration be made in the day or hour previously fixed for an interment or cremation, or an interment or cremation be cancelled, in the instance where the Council is responsible for the digging of the grave, notice of the alteration must be given to the caretaker at the cemetery at least six hours before the fixed for the interment or cremation, and no refund will be made on monies paid in respect of the opening of an existing grave.
- (7) In the event of an emergency burial where the body must be buried a day after the submission of the written application for burial, such application shall be submitted at least one working day before said interment.
- (8) All applications for the enlargement of a grave, unless in exceptional circumstances, must be submitted to the offices of the Municipal Manager at least two working days prior to burial. Such applications must be made timeously and

the Council shall not accept any liability whatsoever for any loss and/or damages caused as a result of failure to do so.

(9) All postponements and/or cancellations for burials shall be given at least hours before said burial, failing which, the applicant shall be liable to pay an additional fee as prescribed by the Municipal Council.

(10) The application contemplated in subsection (2) must be signed by the nearest surviving relative of the deceased person whose body will be buried in the grave or cremated or such other person as the nearest surviving relative may authorize to sign the application on his or her behalf, however, if the Municipal Manager is satisfied that the signature of the nearest surviving relative cannot be obtained timeously, or for any other valid reason, he or she may in his or her discretion grant an application signed by any interested person.

(11) In the instance where a person –

- a. Who at the time of his or her death was suffering from a communicable disease, this must be indicated in the application; or
- b. In whom was inserted radioactive material or a pacemaker, it must be indicated in the application if the said material or pacemaker was removed from the body.

16. Burial and cremation times

(1) A burial and cremation may take place between 05:00 and 17:00.

(2) Despite the provision of the subsection (1), the Municipal Manager to whom an application is made may, if the case is one of emergency, permit interment or cremation outside the times contemplated in subsection (1)

17. Register

The Municipal Manager must keep a record of all burials, and the records must contain:

- a) The particular of the person who requested the interment or cremation;
- b) The particular of the deceased person whose body is to be interred or cremated, such as the name, address, and identification number;
- c) The date of the burial or cremation; and

- d) In the instance of a burial, the number of the grave in which the body is buried.

18. Indigent and destitute persons

- (1) A person may apply to the Council for the burial or cremation of the body of the indigent person and must provide proof that deceased was granted the status as indigent person in terms of indigent policy.
- (2) Subject to the provision of Section 48 of the Health Act, and Section 10 of the Human Tissue Act, 1993, the body of a destitute person or an unclaimed body may be buried or cremated according to conditions determined by the Council.

19. Number of bodies in one coffin.

- (1) Subject to the provisions of subsection (2), only one body may be contained in a coffin.

20. Use of Body Bags

- (1) A body which is to be buried and/or cremated must be sealed in a body bag and contained in a coffin which is in compliance with this By – Law, except to the extent that same conflicts with the religious, traditional and/or other beliefs of the deceased, the applicant and/or their immediate family.

CHAPTER 4: BURIAL

21. Dimensions of graves.

- (1) The standard dimensions of a grave are as follows:-
 - (a) Adult:
 - (i) Single grave: Length: 2200 mm; Width: 900 mm.
 - (ii) Double grave: Length: 2200 mm; Width: 2700 mm.
 - (b) Child:-
 - (i) Single grave: Length: 1500 mm; Width 700 mm.

- (2) Any person requiring a grave for an adult of a size larger than the standard dimensions must, when submitting an application in terms of Section 13 of this By - Law, specify the measurements of the coffin, and pay the charges fee prescribed in schedule 2 for enlarging the opening.
- (3) A person, other than an employee of the Council, who digs a grave in contravention of the dimensions stipulated in subsection (1), he or she commits an offence.

22. Depth of grave

- (1) An adult's grave is 1900 mm in depth and that of a child 1500 mm in depth.
- (2) The lid of the coffin, or where one coffin has been buried on top of another coffin, the lid of the top coffin, may not be less than 1200 mm from the surface.

23. Reservations of grave

- (1) A person desiring to reserve the use of a grave must apply therefore to the Municipal Manager and must pay the fee prescribed by council.
- (2) (2)
- (3) A restriction is placed on the reservation of graves, and reservations shall only be accepted for adult graves in the monumental section as stated in subsection (4).
- (4) In the event of a burial of a husband or wife in the monumental section, only one additional adjoining grave may be reserved for the survivor.
- (5) In the event of a burial of a husband or wife in the aesthetic section, an additional adjoining grave may not be reserved for the survivor; however, subject to the provisions of Section 23 of this By - Law, the interment of the survivor may be permitted in the same grave.

24. Transfer of rights in Cemetery

- (1) No transfer of rights in respect of existing reserved graves shall be permissible.
- (2) Notwithstanding the above, the Council may purchase rights from applicants in respect of existing reserved graves at a rate determined by the burial fee payable in the grave section at the time of said transfer.

25. Child's coffin too large

Should a child's coffin be too large for the dimensions of a child's grave, it must be placed in an adult grave and the prescribed fee for an adult's burial must be paid by the person submitting an application.

26. Construction material of coffin

(1) A coffin buried in a grave must be constructed of wood or biodegradable material.

27. Number of bodies in one grave

(1) Subject to the provisions of Section 19(2) and 34 of this By - Law, only two bodies may be buried in a single grave.

28. Coffin to be covered with earth

The person contemplated in Section 13(1) of this By – Law must ensure that a coffin, upon being placed in a grave, is covered without delay with at least 300 mm of earth.

29. Religious ceremony

The member of a religious denomination may conduct, during the burial and at the grave, a religious ceremony in connection with a burial or memorial service.

30. Hearse and vehicle at cemetery

(1) No hearse or other vehicle may enter a cemetery without the prior permission of the caretaker first having been obtained.

(2) No hearse or other vehicle may use any other route to enter a cemetery than the route set aside for that purpose.

31. Instruction of caretaker

A person taking part in a funeral procession or ceremony in a cemetery must follow instructions by theMunicipal law enforcement,

32. Music inside cemetery

- (1) Only sacred singing is allowed in a cemetery, except in the case of a police or military funeral, in which case the prior permission of the Municipal Manager must be obtained.

33. Occupation of chapel or shelter

- (1) No person may for the purpose of a funeral occupy a chapel or shelter in a cemetery for more than 60 minutes.

(2)

34. Number on grave

- (1) No person may bury a body in a grave on which a peg marked with the number of the grave has not been fixed.

CHAPTER 5: EXHUMATION OF BODY AND RE-OPENING OF GRAVE

35. Disturbance of mortal remains

- (1) Subject to the provisions of an exhumation order given in terms of section 3(4) of the Inquests Act, 1959 any other provision of any Act relating to the exhumation of body's:-

- (a) No body or mortal remains or ground surrounding it in a cemetery may be disturbed;
- (b) No grave may be re-opened; and
- (c) No body may be removed from a grave, without the written consent of the Council and the medical officer of health.

- (2) The fees for exhumation prescribed in the municipal tariff policy must be paid to the Municipal Manager at least two days before the date fixed for the exhumation or removal of the body.

36. Time of exhumation

- (1) No person may exhume or cause a body to be exhumed during such time as the cemetery is open to the public.

37. Re – opening of grave

- (1) No person may re-open a grave for the purpose of reburying a second body in the same grave unless:-
 - (a) The grave was initially made deeper for this purpose;
 - (b) If not made deeper, then only after 10 years have passed since the burial of the first body;
 - (c) For purposes of burial of a receptacle containing ashes, the depth does not exceed 300 mm;
 - (d) The consent contemplated in section 32(1) has been obtained; and
 - (e) The fee prescribed in municipal tariff policy has been paid.
- (2) A person who contravenes a provision of subsection (1) commits an offence.
- (3) Council has the right to re-open a grave for the purpose of establishing, by reading the inscription on the coffin, the identity of the body.

CHAPTER 6: CARE OF GRAVES

38. Shrubs and flowers

The Council may at any time prune, cut down, dig up or remove any shrub, plant, flower, foliage, wreath or adornment if it becomes unsightly, is damaged or wilted.

39. Care of grave

- (1) The maintenance of a grave is the responsibility of the person contemplated (Municipal Manager) in Section 12(2) of this By - Law.
- (2) The Council may, on application by a person contemplated in subsection (1) and upon payment of the fee prescribed in municipal tariff policy, undertake to keep any grave in order for any period.

- (3) The Council may at its discretion undertake to keep, at its own expense, any grave in order for any period.

CHAPTER 7: CREMATION

40. Receptacles and ashes

- (1) Unless the ashes are to be buried by the Council, the person contemplated in section 13(1) of this By – Law must provide a receptacle, on which the full name of the deceased person is indicated, for receiving the ashes.
- (2) The quantity of ashes to be kept, as indicated on the application form by the person contemplated in subsection (1) must, after the cremation, be collected by him or her, and should he or she fail to collect the ashes, the ashes will be dealt with in terms of Section 48(1) of this By - Law.
- (3) Where a receptacle is intended to be placed in a niche in the columbarium:-
- (a) It must:-
 - (i) Be made of wood or stone; and
 - (ii) Be of a size and design as to fit into the niche; and
 - (b) If the niche is not meant to be sealed, have affixed to it a plate on which the full name of the deceased person is inscribed.

41. Burial and exhumation of ashes

- (1) In the absence of an arrangement between the Municipal Manager and the person contemplated in section 37 regarding the ashes, the caretaker may bury or scatter the ashes in a garden of remembrance.
- (2) A person may deposit ashes in a:-
- (a) Grave; or
 - (b) Niche in a:-
 - (i) Columbarium;

(ii) Wall of remembrance; or

(iii) Memorial work.

(3) A person must obtain the consent of the caretaker if he or she wishes to :-

(a) Bury ashes in a grave;

(b) Exhume ashes from a grave; or

(c) Scatter ashes, and the caretaker must, on receiving payment of the fee prescribed in municipal tariff policy.

(i) Give written consent to the applicant to bury, exhume or scatter the ashes; and

(ii) In the instance of burial or exhumation, prepare the grave for burial or exhumation.

(4) A grave for the burial of ashes or a niche in a columbarium must measure 610mm in length, 610mm in width, and 610mm in depth.

42. Cremation certificate

(1) On completion of a cremation; the Municipal Manager must supply a cremation certificate to the person contemplated in Section 37(1) of this By - Law.

(2) The Municipal Manager must, on application and after receipt of the fee prescribed in municipal tariff policy, issue a duplicate cremation certificate to a person.

CHAPTER 8: ERECTION AND MAINTENANCE OF MEMORIAL WORK

43. Consent of Council

(1) When erecting a memorial work, the following must be submitted:-

(a) A plan which given an indication of the measurements and the position;

(b) Specification of the material of which the memorial work is to be constructed; and

(c) The wording of the epitaph.

- (2) The plan must be submitted 30 days before the erection commences, and must be accompanied by the fee prescribed in municipal tariff policy, and the Council, when granting consent, may impose such conditions as it deems necessary.
- (3) No person may bring into the cemetery any material for the purpose of constructing therewith any memorial work on any grave unless and until:-
 - (a) The provisions of subsection(1) to (3) have been complied with; and
 - (b) All charges due in respect such grave have been duly paid.
- (4) The Council's consent of the proposed work is valid for six months only, and in the event of the memorial work not being erected within the prescribed time a new application must be submitted.
- (5) The grave number must be indicated, in a workmanlike manner, in figures 30 mm in size, and failure to do so constitutes an offence.

44. Supervision of work

A person engaged upon any work in a cemetery must effect the work under the supervision of the Municipal Manager and or a person designated by the Municipal Manager,

45. Damaging of memorial work

The Council under no circumstances accepts responsibility for any damage which may at any time occur to a memorial work, and which is not due to the negligence of the Council's employees.

46. Conveying of memorial work

- (1) No person may convey any stone, brick or memorial work or a portion thereof within a cemetery upon a vehicle or truck which may cause damage to the paths or grounds or structures of the cemetery.

47. Vehicle and tools

Every person engaged with work upon a grave or plot must ensure that the vehicles, tools or appliances are of such a kind as not to contravene these By-Laws and by no means block any road or roads.

48. Complying with Council's directions

A person carrying on work within a cemetery must in all respects comply with the directions of the Council.

49. Times for bringing in material and doing work

- (1) No person may bring memorial work or material into or do any work, other than the dismantling of memorial work for burial purposes, within a cemetery except during the following hours: between the hours of 7:00 and 18:00.
- (2) No person may engage in work which may be disturbing when a funeral takes place and for the duration of the funeral.
- (3)

50. Inclement weather

- (1) No person may fix or place any memorial work during inclement weather or while the soil is in an unsuitable condition.

51. Production 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 the Council or its authorized official, produce the written consent issued to him or her in terms of section 40.

- (1) Unless a body was cremated in the crematorium, or a cremation certificate issued by another crematorium is submitted, no person may, without the consent of the Municipal Manager first having been obtained, erect a memorial work in a crematorium.
- (2) A memorial work:-
 - (a) If erected in a garden of remembrance:-
 - (i) Must be made of marble or granite; and
 - (ii) May not exceed a size of 250mm in width, 305mm in length, and 25mm in thickness;

- (b) In intended to seal a niche, must conform in size and material to the memorial work next to it and may have a photograph of the deceased person affixed to it; or
- (c) Erected on a grave, may not exceed 1,2m in height, 610mm in length, and 610mm in width.

CHAPTER 9: SECTIONS IN CEMETERY

52. Council may establish Sections

(1) The Council may establish one or more of the following sections in a cemetery:-

- (a) Monumental section;
- (b) Garden of remembrance;
- (c) Heroes acre;
- (d) Aesthetic section; or
- (e) Panoramic section.

53. Monumental section

(1) Memorial work may be erected upon the whole surface of the grave subject thereto that the provisions of section 41 must be complied with and that the following measurements may not be exceeded:-

- (a) Height: 2000mm.
- (b) Width: 900mm in case of a single grave, and 700mm in case of a double grave.
- (c) Thickness: 250mm.

(2) The Council may in the course of time level all grave and plant grass thereon.

(3) 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 leveled.

(4) A person commits an offence if he or she:-

- (a) Exceeds the measurements stipulated in subsection (1); or
- (b) Contravenes section(3)

54. Garden of remembrance

- (1) This section contains the wall of remembrance with niches, and a garden area in which plaques can be erected.
- (2) A container intended to be placed in a niche may not exceed 300mm x 150mm x 150mm in size.
- (3) Flowers and wreaths may be placed on the places provided therefore only.

55. Heroes acre

- (1) A heroes' acre is an area erected for the purpose of burial and memorial.
- (2) No person may erect such memorial without the written approval of the Council and or a person delegated by the Municipal Council must decide upon the merits of such matters.
- (3) The size of the memorial work must be 500mm x 300mm and must be manufactured from a non-corrodible metal or masonry upon which *inter alia*, the contribution made by the person in question is mentioned.

56. Aesthetic section

Is the section in a cemetery which has been set aside by the Council where in a headstone may only be erected and strips of garden will be provided by the Council. No person may erect such headstone without written approval of the Council.

57. Panoramic section

This is the section at cemetery which is set aside by the Council where a memorial work is restricted by a plaque or memorial slab. No person may erect such a memorial work or memorial slab without the approval of the Council or Council decide upon the merits of such matter

CHAPTER 11: MISCELLANEOUS

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

- (1) An order, notice or other document requiring authentication by the Council must be sufficiently signed by the municipal manager or by a duly authorized officer of the Council, such authority being conferred by resolution of the Council or by a by-law or regulation, and when issued by the Council in terms of these by-laws shall be deemed to be duly issued if it is signed by an officer authorized by the Council.
- (2) Any notice or other document that is served on a person in terms of these by-laws, is regarded as having been served:-
 - (a) When it has been delivered to that person personally;
 - (b) When it has been left at that person's place of residence or business in the republic with a person apparently over the age of sixteen years;
 - (c) When it has been posted by registered or certified mail to that person's last known residential or business address in the republic and acknowledgment of the posting thereof from the postal service is obtained;
 - (d) If that person's address in the republic is unknown, when it has been served on that person's agent or representative in the republic in the manner provided by paragraphs (a), (b) or (c);
 - (e) If that person's address and agent or representative in the republic is known, when it has been posted in a conspicuous place on the property or premises, if any, to which it relates; or
 - (f) In the event of a body corporate, when it has been delivered at the registered office of the business premises of such body corporate.
- (3) Service of a copy shall be deemed to be service of the original.

- (4) Any legal process is effectively and sufficiently served on the municipality when it is delivered to the municipal manager or a person in attendance at the municipal manager's office.

59. Complaint

A person wishing to lodge a complaint must lodge the complaint, in writing, with the Municipal Manager.

60. Notice of compliance and representations

- (1) A notice of compliance served in terms of Section 43 of this By – Law must state:-
- (a) The name and residential and postal address, if either or both of these be known, of the person;
 - (b) The nature of the state of disrepair;
 - (c) In sufficient detail to enable compliance with the notice, the measures required to remedy the memorial work;
 - (d) That the person must within a period of 30 (thirty days) 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 representation, as contemplated in subsection (3) may, within the time period stipulated under paragraph (d) above, be made to Municipal Manager at a specified place.
- (2) Municipal Manager, when considering any measure or time period envisaged in subsections (1)(d) and (e), must have regard to:-
- (a) The principles and objectives of these By-laws;
 - (b) The state of disrepair;
 - (c) Any measures proposed by the person on whom measures are to be imposed; and

- (d) Any other relevant factors.
- (3) A person may within 30 (thirty days) make representations, in the form of a sworn statement or affirmation to Municipal Manager at the place specified in the notice.
- (4) Representations not lodged within the 30 (thirty days) will not be considered, except where the person has shown good cause and Municipal Manager condones the late lodging of the representations.
- (5) Municipal Manager must consider the representations and any response thereto by an authorized official or any other person, if there be such a response.
- (6) Municipal Manager 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 Municipal Manager must also consider the further response.
- (7) Municipal Manager must, after consideration of the representations and response, if there be such a response, make a decision in writing and serve a copy of it on the person.
- (8) The decision must:-
- (a) Set out the findings of Municipal Manager;
 - (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 decision made by Municipal Manager.
- (9) If the notice of compliance is confirmed, in whole or in part, or is altered but not set aside, Municipal Manager will inform the person that he or she:-
- (a) Must discharge the obligations set out in the notice; or
 - (b) May elect to be tried in court.
- (10) If the person elects to be tried in court he or she must, within seven calendar days, notify Municipal Manager of his or her intention to be so tried.
- (11) If the person does not elect to be tried in court, he or she must, within the Prescribed manner and time discharges his or her obligations under the decision.

(12) Where there has been non compliance with the requirements of a notice, the Municipal Manager may take such step as it deems necessary to repair the monumental Work and the cost thereof must be recovered from a non compliant person in accordance with Section.

61. Costs

Should a person fail to take measures required of him or her by notice, Municipal Manager may, recover all costs incurred from the person concerned.

62. Appeal

- (1) A person, whose rights are affected by a decision of an official, may appeal against that decision by giving written notice of the appeal and reasons to the Municipal Manager within 21 days of the date of the notification of the decision.
- (2) The Municipal Manager must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.
- (3) The Municipal Manager must commence with an appeal within six weeks and decide the appeal within a reasonable time.

63. Charges

Should a person fail to pay a fee as prescribed in these By-Laws, Council may act in accordance with the debt collection and recovery policy

64. Penalties

A person who has committed an offence in terms of these by-laws is, on conviction, liable to a fine or in default of payment, to imprisonment for a period not exceeding six months, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment.

65. Limitation of liability

The Council is not liable for any damage or loss caused by:-

- (a) The exercise of any power or the performance of any duty in good faith under these by-laws; or

- (b) The failure to exercise any power, or perform any function or duty in good faith under these by-laws.

66. Revocation of By-Laws

The Dr. JS Moroka Municipality previous cemetery, and crematorium by - laws are hereby revoked.

67. Short title and commencement

These by-laws may be cited as the Dr. J.S. Moroka Local Municipality Funeral Parlours, Cemeteries and Crematoria By-Laws, and commence on a date as determined by the Council.

**ANNEXURE 1
APPLICATION FORM FOR BURIAL / CREMATION**

Name of applicant:

Address of applicant:

Name of diseased person to be interred:

Particulars of diseased person:

Contact Numbers:

Grave number:

ANNEXURE 2

APPEAL FORM

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ANNEXURE 3

CONTRAVENTION NOTICE

**SCHEDULE 1
PRESCRIBED FEES**

NO.	DESCRIPRION OF THE MATTER	AMOUNT
	GRAVE ENLARGEMENT FEES	
	Burial fee	

3. GRAVE ENLARGEMENT FEES