

CITY OF CAPE TOWN

**CEMETERIES, CREMATORIA AND
FUNERAL UNDERTAKERS BY-LAW**

2011

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CEMETERIES, CREMATORIA AND FUNERAL UNDERTAKERS BY-LAW, 2011

To repeal the Cape Metropolitan Council: By-law for Cemeteries and Crematoria, 2000; 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 the City of Cape Town 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 Council of the City of Cape Town, as follows:-

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CHAPTER 1

1. Definitions

In this By-law, 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 City;

"ashes" means the cremated remains of a corpse;

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

"authorised official" means an official of the City authorised to implement or enforce the provisions of any law;

"berm section" means a grave section in a cemetery set aside by the City where memorial work is restricted to a headstone only with ground cover planted over the length of the grave;

"biodegradation" means a process whereby the corpse is disposed of by bio-friendly chemical dissolution;

"burial" means when land is excavated for the interment of a body or ashes or when a structure is employed for the interment of a body or ashes;

"burial order" means a burial order issued in terms of section 20 of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992);

"cemetery" means any land containing one or more graves;

"City" means the City of Cape Town established in terms of section 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) by Provincial Notice No. 479 dated 22 September 2000, as amended;

“City Parks” means the Department of City Parks in the Directorate: Community Services in the City of Cape Town;

"corpse" means the remains of a deceased person and includes a still-born child and foetus;

“corpse reduction” means any process used to reduce corpses including cremation, freeze reduction and biodegradation;

"Council" means the Council of the City or any political structure, political office bearer, councillor or any staff member acting under council's delegated or sub-delegated authority;

"cremated remains" means all recoverable ashes of a corpse after the cremation;

"cremation" means the process whereby a corpse is reduced by fire;

"crematorium" means a building where deceased persons are cremated;

“environmental health practitioner” means a person appointed as such in terms of section 80 of the National Health Act 61 of 2003;

"exhumation" means the removal of a corpse from its grave;

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

"funeral undertaker" means any person, organisation or corporate body in the business of, or which undertakes or organises the burial or reduction of corpses for gain;

"funeral undertaker's premises" has the meaning assigned to it in regulation 1 of the regulations;

"garden of remembrance" means a section of a cemetery set aside for the erection of memorials to an individual, a group of people or an event, memorial walls, niche walls, the establishment of ash graves and the scattering of ashes;

"grave" includes any place, whether wholly or partly above or below ground level in which a corpse 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;

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

"interment" means to commit a corpse or ashes to its final resting place;

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

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

"memorial square" means a grave section in a cemetery set aside for the interment and memorialisation of heroes and celebrated persons;

"memorial wall (cenotaph)" means a wall or structure on which the names of heroes and celebrated persons are depicted, including the graphic depiction of historical events;

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

"monumental section" means a grave section in a cemetery set aside for the erection of memorial work;

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

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

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

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

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

"officer in charge" means the authorised official whom the City appoints from time to time in a supervisory capacity with regard to a cemetery or crematorium;

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

"prescribed fee" means a fee as determined by the City;

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

“private crematorium” means a building where deceased persons are cremated but is not owned and/or managed by the City;

“public grave” means a grave in which a second burial of any member of the public may take place after a period of five years and on which the erection of a headstone is not permitted for either the first or second burial;

"reduction burial" refers to the making of a grave available for a subsequent interment after a specified period;

"regulations" means the regulations governing Funeral Undertakers' Premises, made under sections 33 and 39 of the Health Act, 1977 (Act No. 63 of 1977);

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

CHAPTER 2

DISPOSAL AND INTERMENT OF A BODY

Methods of disposal of a body

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

- (a) in-ground burial;
- (b) above-ground burial;
- (c) cremation; or
- (d) freeze reduction and biodegradation.

Consent required for interment

3. (1) No person may dispose of a corpse in any manner other than the manner prescribed by the City in this By-law, and a person who wishes to dispose of a corpse must obtain the written consent of the City before he or she disposes of the corpse, and must comply with the requirements of the City.

(2) A person who wishes to obtain the consent as contemplated in subsection (1) must submit to the City, an application in writing together with –

- (a) the proof of payment of the prescribed fee;
- (b) the death certificate of the corpse;
- (c) a burial order issued in terms of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992);
- (d) in the case of a funeral undertaker, on an annual basis, the certificate of competence issued in terms of the regulations, proof of registration on the database of City Parks referred to in section 17(1), and in the case where the burial order has been issued by a funeral undertaker, proof of authorization in terms of section 4 of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992);

- (e) an affidavit by the next of kin of the deceased, or where not practicable, other close relative, consenting to the disposal of the corpse when such corpse is to be buried in the manner requested;
- (f) in the instance where a person who at the time of his or her death was suffering from a notifiable disease, this must be indicated in the application;
- (g) details of cultural or religious practices that need to be adhered to.

(3) The City may approve the application subject to the conditions set out in the approval, or refuse the application.

(4) An application for interment must be submitted to the City not later than the time periods that may be prescribed by the City from time to time.

(5) The time periods so stipulated shall take account of any religious practice in this regard, which may be relevant and adhered to by any particular religious group.

(6) Should any alteration be made in respect of the day or hour previously fixed for an interment, or an interment be cancelled, in the instance where the City is responsible for the digging of a grave, notice of the alteration must be given to the City at least eight hours before the time fixed for the interment.

(7) The City reserves the right to inspect the contents of a coffin before interment, in the event of any irregularities in paperwork.

(8) The City may refuse a person, including a funeral undertaker, permission to inter a corpse if relevant documentation required by the City has not been submitted to the City prior to the interment.

Interment times

4. (1) Interments shall take place at times determined by the City from time to time.

(2) A person contemplated in section 3(2) will be allocated an interment time by the City and interments that are not undertaken within the time allocated will result in such interment being postponed until such time as an alternative interment time is available without inconveniencing other interments taking place within the time allocated.

(3) Despite the provisions of subsection (1), the City may, if the case is one of emergency or the custom or conventions of a religious or cultural group, permit interment outside the times contemplated in subsection (1).

(4) The interment times determined by the City in subsection (1), (2) and (3) shall take into account the practices adhered to by, and beliefs of specific religious groups.

Coffin

5. (1) A coffin must be used for any burial of a corpse except where religious beliefs prohibit its use, or special permission has been granted.

(2) Subject to the provisions of subsection (3), only one corpse may be contained in a coffin, unless this is contrary to the tradition, customs or religious beliefs of the deceased person or the person mentioned in section 3.

(3) A mother and child who died during childbirth may be contained in one coffin, if the consent of the City has been obtained and the prescribed fees have been paid.

(4) If there is more than one body in a coffin, each body must be contained in a separate body bag.

Construction material of coffin

6. A coffin interred in a grave should insofar as this is possible be constructed of natural wood or other non-toxic, perishable material.

Coffin to be covered

7. The person referred to in section 3(2), must ensure that a coffin, upon being placed in a grave, is covered with at least 300mm of earth prior to the conclusion of the ceremony.

Dimensions of grave apertures

8. (1) All graves within the cemeteries of the City shall comply with the dimensions set out hereunder and there shall be two grave aperture sizes with the following dimensions:

(a) Large Grave:

Length: 2 250mm

Breadth: 750mm

(b) Small Grave:

Length: 1 350mm

Breadth: 535mm

(2) All graves shall be a minimum depth of 1 400mm.

(3) Any person who requires an aperture for an interment in a grave of a size larger than the standard dimensions and depth specified in subsection (1) must, when submitting an application in terms of section 3, specify the measurements of the coffin and the depth, and pay such charges or fee as prescribed by the City from time to time.

(4) Where one coffin has been buried on top of another coffin, there must be at least 300mm of soil between the coffins.

(5) On completion of an interment, the person referred to in section 3(2) or persons who dug the grave must clear the surrounding areas including pathways and graves of all soil, debris and other matter or material exposed by the digging of the grave.

(6) The person who arranged the interment must take all reasonable steps to ensure that no damage occurs to surrounding property during the interment or ceremony including any collapse of grave walls and take steps to prevent such collapse.

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

Indigent persons

9. A person making application for the burial of an indigent person, must make a declaration to that effect.

Register

10. The City 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.

Right of burial

11. (1) No person shall acquire any right including a right of burial in any ground or grave in a cemetery owned by the City, other than such rights or interests as may be obtainable under this By-law.

(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 the City.

(3) On application in terms of section 3 and on payment of the prescribed fee, a person may acquire the right of burial in a public grave.

(4) On application in terms of section 3 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.

(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.

(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.

(7) The right to subsequent burials referred to in subsection (4) is conditional on the suitability of the grave for additional burials as determined by the City.

(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 the City, 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.

(9) In the case of a private grave, where the holder of the right acquired in terms of subsection (11)(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 3

FUNERALS

Religious and other ceremonies

12. The members of a religious denomination may, without prior permission and during the interment and at the grave, conduct a religious ceremony in connection with an interment or memorial service, which ceremony may not last more than the time period determined by the City.

Music inside cemetery

13. 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 the City.

Hearse and other vehicles at cemetery

14. (1) No hearse or other vehicle may enter a cemetery without the prior permission of the City, which may not be unreasonably withheld.

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

(3) No hearse or other vehicle may park in any place in a cemetery other than the section of a cemetery specifically allocated for parking.

Instruction of officer in charge

15. A person taking part in a funeral procession or ceremony in a cemetery must follow the reasonable instructions of the City.

CHAPTER 4

FUNERAL UNDERTAKERS

Funeral undertakers

16. (1) All funeral undertakers that wish to operate as such within the jurisdiction of the City are required to register on a database with City Parks.

(2) All funeral undertakers, when registering on the database referred to in subsection (1), shall be required to sign a memorandum of understanding in which it is confirmed that the funeral undertaker is familiar with and will abide by this By-law, and all policy and fee structures in terms of this By-law.

(3) All information supplied by a registered funeral undertaker in any application submitted in terms of this By-law shall be true and correct.

(4) A funeral undertaker shall only transport a corpse in a vehicle suitable for such purpose, and which meets the requirements determined by the Environmental Health Officer.

(5) In the event of any registered funeral undertaker who breaches any provision of this By-law, policy, guideline or fee structure in terms of this By-law, the City may, after notice has been given cancel the registration of the funeral undertaker, and suspend the funeral undertaker from further burials in cemeteries within the jurisdiction of the City.

CHAPTER 5

THE ADMINISTRATION AND CONTROL OF CEMETERIES

Appointment of officer in charge

17. (1) The City must appoint an officer in charge for each cemetery to control and administer the cemetery.

(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.

Hours of admission for public

18. (1) The City shall determine and cause the hours during which a cemetery or part thereof is open to the public to be displayed on a notice board placed at each entrance to the cemetery.

(2) No person, excluding duly authorised workers or authorised officials from the City, with permission, 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 on a notice board as contemplated in subsection (1).

Children

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

Keeping to path

20. All persons are required to keep to the paths indicated in a cemetery, where such paths exist.

Prohibited conduct within any cemetery

21. (1) No person may –

- (a) commit or cause a nuisance within any cemetery;
- (b) ride an animal, cycle, or skateboard for recreational purposes or partake in any other form of recreational or sporting activity, with the exception of a wheelchair, within any cemetery, unless otherwise determined by the City;
- (c) with the exception of a blind person, bring into or allow an animal to wander inside any cemetery, provided that dogs on leashes shall be permitted unless otherwise determined by the City;
- (d) plant, cut, pick or remove a tree, plant, shrub or flower without the permission of the City;
- (e) hold or take part in a protest in any cemetery;
- (f) interrupt or disrupt-
 - (i) the performance of duties of an authorised official or workman employed by the City; or
 - (ii) a funeral undertaken in any cemetery;
- (g) obstruct, resist or oppose the officer in charge in the course of his or her duty or refuse to comply with an order or request which the officer in charge is entitled under this By-law to make;
- (h) mark, draw, scribble, paint, or place an object on a wall, building, fence, gate, memorial work or other erection within any cemetery other than for official purposes;
- (i) use water for any form of gardening without the permission of the City;
- (j) leave any rubbish, soil, stone, debris, garbage or litter within any cemetery;
- (k) in any way damage, deface or desecrate any part of a cemetery or anything therein;

- (l) enter or leave a cemetery, except by an entrance or exit provided for these purposes;
- (m) solicit or conduct any business, order, exhibit, distribute or leave a tract, business card or advertisement within a cemetery, other than in an area designated for such purposes by the City and with the prior permission of the City;
- (n) treat a grave or memorial work with disrespect, such as climbing or sitting on a grave or memorial work;
- (o) enter an office, building or fenced place in a cemetery except in connection with lawful business;
- (p) expose a corpse or a part thereof in a cemetery;
- (q) exceed the prescribed speed limit of 20 km per hour in a cemetery;
- (r) use any cemetery as a thoroughfare;
- (s) allow or cause any animal to enter any cemetery with the exception of an officer in charge, living on site and who is keeping pets with the prior approval of the City;
- (t) bring any alcohol into or consume any alcohol in a cemetery or discharge any firearms in a cemetery except in the case of a police, state, or military funeral;
- (u) make or ignite any fire in a cemetery without the prior permission of the City;
- (v) bring into a cemetery excavation equipment, saws or metal detecting equipment, other than with the permission of the City;
- (w) hunt or harm any animals or birds;
- (x) graze domestic animals in unused areas or amongst the graves; or
- (y) conduct driving lessons in a cemetery.

(2) An authorised official of the City working in any cemetery may not enter into an agreement with a member of the public for the purpose of undertaking work in the cemetery on behalf of such person, such as maintaining or digging a grave or any other related work.

(3) The City may impound an animal found in any cemetery otherwise other than in accordance with the provisions of the By-law.

(4) Gazebos larger than two meters by three meters may not be erected in a cemetery without the prior permission of the City.

CHAPTER 6

PRIVATE CEMETERIES AND CREMATORIA

Parts of By-law applicable

22. The provisions of sections, 5, 6, 10, and chapter 9 of this By-law shall apply *mutatis mutandis* to private cemeteries, and the provisions of sections 52, 53 and 55(2) shall apply *mutatis mutandis* to private crematoria.

Duties of proprietors

23. (1) The proprietor of a private cemetery or crematoria for which the consent of the City has been obtained must —

- (a) comply with –
 - (i) any special conditions which may be determined by the City 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 the City 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.

(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 7

SECTIONS IN A CEMETERY

City may establish sections

24. (1) The City may establish one or more of the following sections in its cemeteries:

- (a) Monumental section;
- (b) Berm section;
- (c) Landscape section;
- (d) Memorial Square;
- (e) Garden of Remembrance;
- (f) Crematorium and Corpse Reduction Facility;
- (g) Mausolea;
- (h) Surface Grave Units; or
- (i) Denominational section.

Monumental section

25. (1) A monumental section is a grave section in a cemetery set aside for the erection of memorial work at graves.

(2) The City may in the course of time level all graves 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 levelled.

Berm section

26. (1) A berm section is a grave section in a cemetery set aside by the City where memorial work is restricted to a headstone only, with ground cover planted over the extent of the grave.

(2) Headstones may contain two receptacles for flowers.

(3) Headstones must be erected on the concrete plinth supplied by the City or on a suitable foundation to support the headstone, which shall be embedded horizontally at ground level in the position indicated by the City.

(4) No kerb or frame demarcating the grave or a slab covering is permitted.

(5) The City may, in the course of time, level all graves and plant grass thereon.

(6) 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.

Landscape section

27. (1) A landscape section is a grave section in a cemetery set aside by the City where memorial work is restricted to a horizontally placed plaque or memorial slab only, with ground cover planted over the extent of the grave.

(2) No object other than a plaque or memorial slab may be placed on the grave.

(3) No kerb or frame demarcating the grave or a slab covering is permitted.

(4) The City may in the course of time level all graves and plant grass thereon.

(5) Flowers, foliage, wreaths or any adornment may be placed only upon or beside the plaque or memorial slab, except in the case of graves which have not yet been levelled.

Garden of Remembrance

28. (1) A garden of remembrance is a section in a cemetery set aside for the erection of memorials to an individual, a group of people or an event, memorial walls (cenotaph), niche walls, the establishment of ash graves and the scattering of ashes;

(2) Flowers and wreaths may be placed only on the places provided therefore.

Crematorium and Corpse Reduction Facility

29. The City may set aside sections in a cemetery for the establishment of a crematorium and a corpse reduction facility.

Memorial Square

30. (1) A memorial square is a grave section in a cemetery set aside for the interment and memorialisation of heroes and celebrated persons.

(2) No person may be interred or commemorated in this section unless the status of a hero or celebrated person has been confirmed by the City in writing.

Mausolea

31. A mausolea section may be established in a cemetery in which corpses are interred in mausolea.

Surface Grave Units

32. A surface grave unit section may be established in a cemetery in which corpses are interred in surface grave units.

Denominational section

33. (1) The City may set aside denominational sections 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 other than the norm.

(2) The allocation of such sections may not be to the detriment of the burial requirements of the general residents of the City.

CHAPTER 8
ERECTION AND MAINTENANCE OF
MEMORIAL WORK AND CARE OF GRAVES

Consent of City

34. (1) No person may bring any memorial into a cemetery or erect, alter, paint, renovate, decorate, remove or otherwise interfere with any memorial work or cut any inscription thereon in a cemetery without the written consent of the City and payment of the required fee, other than for the purposes of routine maintenance work.

(2) Before erecting memorial work an application must be submitted to the City for approval at least five working days prior to the proposed erection, such application to include:

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

(3) The City may approve the application referred to in subsection (2) with or without conditions as it deems necessary, and may refuse the application if it does not comply with the requirements in respect of memorial work as determined by the City.

(4) No person may bring into the cemetery any material for the purpose of constructing therewith any memorial work on any grave unless –

- (a) the provisions of subsection (1) to (3) have been complied with; and
- (b) proof of payment in respect of work to be carried out has been submitted.

(5) The consent for the proposed work is valid only for a period of twelve (12) months from the date on which it is approved, and in the event of the memorial work not being erected within the prescribed time a new application must be submitted.

Requirements for erection of memorial work

35. 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 34(2);
- (b) all work must be effected according to the conditions contemplated in section 34(3);
- (c) proceedings must be of such a nature that no damage may be caused to any structure or offence given;
- (d) with the applicant's permission, the name of the maker or manufacturer can be displayed on a memorial work, but no address or any other particulars may be added thereto, and the space utilized for it may not be larger than 40 x 100 mm;
- (e) all unused material after the completion of the work must be removed and the adjoining areas must be left neat and clean; and
- (f) any damage caused must be repaired at the cost of the person responsible for such damage and should the responsible person fail to affect such repair, after due notice, the City may undertake the remedial work at the cost of the person who erected the memorial work.

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 referred to in section 34(2).

(2) Should the condition referred to in subsection (1) not be complied with, the City 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.

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

Work and maintenance in respect of memorial work

37. (1) Any person engaged in any work, shall affect such work under the supervision of the City.

(2) Should the person who erected a memorial work allow such memorial work to fall into such a state of disrepair that it may cause danger or deface the cemetery, the City may serve a notice of compliance, as contemplated in section 59, on such person.

(3) The City may, after due notice, at any time change or alter the position of a memorial work in a cemetery placed without the express consent of the City and recover the cost thereof from the owner of the memorial work.

(4) A memorial work placed, built, altered, decorated, painted or otherwise dealt with in a cemetery in such manner that any provisions of this By-law are contravened, may be removed by the City at the cost of the person responsible, after due notice, without payment of any compensation.

Damaging of memorial work

38. The City 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 the City.

Vehicle and tools

39. (1) Every person engaged with work upon a grave or plot must ensure that the vehicles, tools or appliances comply with the provisions of this By-law and any other law, and do not block roads or paths.

(2) No person may convey any materials 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.

Complying with directives of the City

40. A person carrying out work within a cemetery must in all respects comply with the directives of the City.

Times for bringing in material and doing work

41. (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 the City.

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

Subsiding soil conditions

42. The City is not liable for damage to memorial work resulting from any subsiding soil.

Production of written consent

43. A person charged with a work or on his or her way to or from work within the cemetery must, upon demand from the City or its authorised official, produce the written consent issued to him or her in terms of section 34(1).

Care of grave

44. (1) The maintenance of a grave is the responsibility of the person contemplated in section 3(2).

(2) The City may undertake to keep any grave in order for any period.

(3) The City may undertake to maintain any grave for any period at its own expense.

CHAPTER 9

EXHUMATION, REDUCTION BURIAL AND OSSUARIES

Application for exhumation

45. (1) An application for exhumation must be submitted to the City, 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.

Conditions of exhumation

46.(1) No person may exhume or cause to be exhumed a corpse or human remains without the written consent of the-

- (a) the City; and
- (b) the Provincial Department of Health in accordance with the Exhumations Ordinance, 1980 (Ordinance No. 12 of 1980).

(2) The written consent referred to in subsection (1) must be submitted to the environmental health practitioner at least five working days prior to the approved exhumation date.

(3) The environmental health practitioner may impose conditions with respect to exhumation as referred to in subsection (1) and an exhumation may only proceed when such conditions have been complied with.

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

(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.

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

(7) Exhumations shall be carried out in accordance with the City's policy on exhumation and re-interment of human remains.

(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).

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

Emergency Exhumations

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

(2) An emergency exhumation shall comply with the provisions of sections 45 and 46.

(3) A member of the South African Police Services must be present during emergency exhumations.

Wrongful Burial

48. The City may if a body has been buried in contravention of this By-law, subject to the provisions of section 45 with the exception of section 45(1)(c), 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.

Reduction Burial

49. 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 (11)(4) 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.

Establishment of an Ossuary

50. An ossuary may be established in a cemetery.

CHAPTER 10

USE AND CLOSURE OF DISUSED CEMETERIES

Use and closure of disused cemeteries

51. (1) Despite any provision of this By-law, and subject to the provisions of subsection (6), the City 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.

(2) Despite any provision of this By-law, and subject to the provisions of subsection (6), the City 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.

(3) Despite any provision of this By-law, and subject to the provisions of subsection (6), the City 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).

(4) The City 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.

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

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

CHAPTER 11
CREMATIONS

Applications for Cremation

52. (1) Applications for cremation must be made upon terms, at times and places and upon payment of fees as determined by the City.

(2) A person may only cremate or cause to be cremated any body within any crematorium after –

(a) complying with applicable legislation;

(b) obtaining the approval of the City; and

(c) complying with all the conditions as determined by the City.

Cremations

53. (1) Where a member of the public desires to be present at a cremator, a request for such member to be present must be made to the City, which will consider the request as it deems fit.

(2) Any corpse which contains a cardiac pacemaker or radio-active implant of any kind or any other material which may result in an explosion or harmful emissions when incinerated may not be cremated unless it is removed.

(3) A crematorium shall be fitted with equipment in order to prevent the dispersion of ash into the atmosphere.

Coffins for cremation

54. (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 other non-toxic material.

(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 whatsoever nature, and the City shall have the right to remove non-combustible material from the coffin.

(5) Before a cremation is permitted to take place, the applicant or his or her representative shall be obliged to produce a certificate certifying that the coffin complies with subsections (2) and (3) above.

(6) No corpse may be removed from any coffin for the purpose of incineration and a coffin may not be opened in the crematorium except with the permission of the City, which shall not be unreasonably withheld.

General Requirements for memorials and memorial work

55. (1) The City may provide –

- (a) buildings, niches or other facilities for the deposit and preservation of ashes for definite periods or in perpetuity upon terms and conditions as may be determined by the City.
- (b) facilities for memorial tablets of approved material, upon terms and conditions as may be determined by the City; 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 on books of remembrance must comply with general standards of decency and propriety and must not be of such a nature so as to offend the feelings of the public.

(3) A person may only –

- (a) open a niche containing ashes; or
- (b) remove an urn or casket containing ashes from a niche with the permission of the City, which will 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) The City or its authorised officials will not be liable to members of the public for any damage to or theft from niches, urns, memorials or any other embellishments thereon within a crematorium under its control or its grounds.

Disposal of Ashes

56. (1) Ashes must be disposed of as requested by the applicant or his or her representative for cremation.

(2) The applicant or his or her representative must, at the time of application for cremation, give directions as to the disposal of ashes.

(3) Despite the above, the City has the right to dispose of the ashes in accordance with any applicable legislation.

CHAPTER 12

MISCELLANEOUS

Authentication and service of order, notice or other document

57. (1) An order, notice or other document in terms of this By-law requiring authentication must be signed by, or on the instruction of a duly authorised official of the City.

(2) Any notice or other document that is served on a person in terms of this By-law, 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 of South Africa 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 an acknowledgement 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), or (b) or (c);

- (e) if that person's address and agent or representative in the Republic is unknown, when it has been affixed 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 or 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 City when it is delivered to the City Manager or a duly authorised person.

Complaint

58. A person wishing to lodge a complaint with the City in terms of the provision of this By-law must do so in writing at the City Manager's office.

Notice of compliance and representations

59. (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 (3) may, within the time period stipulated under paragraph (d), be made to the City at a specified place.

(2) The City, when considering any measure or time period envisaged in subsections (1)(d) and (e), must have regard to –

- (a) the principles and objectives of this By-law;
- (b) 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.

(3) A person may within the time period contemplated in subsection (1) (f) make representations, in the form of a sworn statement or affirmation to the City at the place specified in the notice.

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

(5) The City must consider the representations and any response thereto by an authorised official or any other person.

(6) The City 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 the City must also consider the further response.

(7) The City must, after consideration of the representations and responses, make an order in writing and serve a copy of it on the person.

(8) The order must –

- (a) set out the findings of the City;
- (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 the City.

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

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

Costs

60. Should a person fail to take the measures required of him or her by notice, the City may recover from such person all costs incurred as a result of it acting in terms of section 59(10).

Appeal

61. A person whose rights are affected by a decision delegated by the City 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, 2000 (Act No. 32 of 2000) to the City Manager within 21 days of the date of the notification of the decision.

Charges

62. The prescribed fees to be paid to the City in terms of this By-law must be determined in terms of the City of Cape Town: Tariff By-law.

Offences and Penalties

63. (1) A person who contravenes the provisions of sections 3(1), 4(2), 4(3), 5(1), 5(2), 5(3), 5(4), 7, 12, 13, 14(1), 14(2), 14(3), 15, 16(3), 16(4), 18(2), 19, 21(1), 21(4), 25(3), 26(3), 26(4), 26(6), 27(3), 27(5), 28(2), 30(2), 34(1), 34(4)(a), 35(1), 36(1) 39(1), 39(2), 40, 41(1), 41(2), 43, 52(2), 53(1), 53(2), 54(1), 54(2), 54(3), 54(4), 54(5), 54(6), 55(3), 55(4) or 55(5) commits an offence.

(2) A person who has committed an offence in terms of this By-law will be, on conviction, liable to a fine not exceeding R50 000.00 (Fifty Thousand Rand) or in default of payment, to imprisonment for a period not exceeding six (6) months, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment.

Limitation of liability

64. The City is not liable for any damage or loss caused by –
- (a) its authorised officials in exercising any power or performing any function or duty in good faith under this By-law;
 - (b) its authorised officials in failing to, exercise any power, or perform any function or duty in good faith under this By-law; or
 - (c) the exercise by a person of a right which he or she has obtained from the City.

Exemptions

65. (1) Any person may by means of a written application, in which the reasons are given in full, apply to the City for exemption from any provision of this By-law.

(2) The City may –

- (a) grant an exemption in writing and the conditions in terms of which, if any, 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 City under subsection (2). If an activity is commenced with before such undertaking has been submitted to the City, the exemption granted shall be of no force and effect.

(4) If any condition of an exemption is not complied with, the exemption lapses immediately.

(5) The failure to comply with a condition of an exemption in terms of subsection (2) constitutes an offence.

Powers and Functions

66. (1) Unless otherwise stated in this By-law, the City Manager shall be responsible for –

(a) All functions and decisions contemplated in this By-law;

(b) The administration of this By-law.

(2) The City Manager may delegate any of his powers or functions to an appropriate authorised official with the power to sub-delegate in order to maximise administrative and operational efficiency.

Liaison forums in community

67. (1) The City may establish one or more liaison forums in a community for the purposes of –

(a) creating conditions for and encouraging, a local community to participate in the affairs of the City relating to the matters regulated in this By-law; and

(b) promoting the achievement of a healthy environment, insofar as they may relate to matters regulated in this By-law.

(2) A liaison forum may consist of –

(a) a member or members of an interest group, or affected persons;

(b) a member or members of a community in whose immediate area a cemetery exists;

(c) a designated authorised official or authorised officials of the City; and

(d) the responsible councillor in such community .

(3) The City may, when considering an application for consent, or exemption in terms of this By-law request the input of a liaison forum.

(4) A liaison forum or any person or persons contemplated in subsection (2) may, on their own initiative, submit an input to the City for consideration.

Guidelines and Policies

68. The City 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.

Repeal of By-laws

69. (1) The Cape Metropolitan Council: By-law for Cemeteries and Crematoria, 10 November 2000, 621/2000, is hereby repealed.

(2) In the event of any other By-law of the City being inconsistent with this By-law, the provisions of this By-law shall prevail, to the extent of the inconsistency.

Short title and commencement

70. This By-law is called the City of Cape Town: Cemeteries, Crematoria and Funeral Undertakers By-law, 2011.