

THEMBISILE HANI LOCAL MUNICIPALITY



FUNERAL PARLOURS, CEMETERIES AND CREMATORIA BY-LAW



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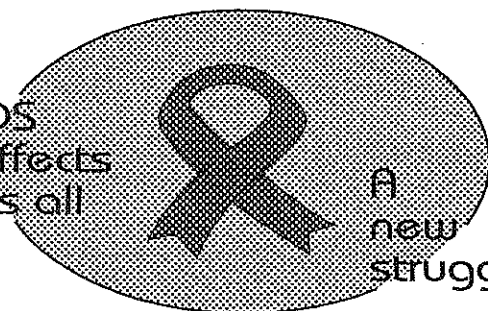
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No. 2138

We all have the power to prevent AIDS

AIDS
affects
us all



A
new
struggle

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HELPLINE**

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DEPARTMENT OF HEALTH

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**THEMBISILE HANI 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 Thembisile Hani Local Municipality, enacts as follows:-

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1. DEFINITIONS

(1) In these By-laws, unless the context otherwise indicates-

“Adult”	means a deceased person over the age of 12 years and where the word is used to define a corpse, a deceased person whose coffin will fit into the grave opening prescribed for adults in section 18;
“Aesthetic section”	means a cemetery or section of a cemetery which has been set aside by the Council wherein only headstones may be erected;
“Approved”	means the approved by the Council;
“Ashes”	means the cremated remains of a corpse;
“Berm”	means a concrete base laid at the head of a grave and on which a memorial is erected;
“Burial”	means interment in earth, a sepulcher or tomb;
“Burial order”	means an order issued in terms of the Birth and Deaths Registration Act, 1992 (Act 51 of 1992);
“Caretaker”	means the official whom the Council appoints from time to time in a supervisory capacity with regard to a cemetery or crematorium;
“Cemetery”	means a land or part of a land within the municipal area set aside by the Council as a cemetery;
“Child”	means a person who is not an adult, and where the word is used to define a corpse, means a deceased person whose coffin in section 18, and includes the corpse of a stillborn child and a foetus;
“Columbarium”	means a the place set aside in the basement of a crematorium or chapel containing rows of niches for the purpose of placing receptacles containing the ashes of cremated corpses therein;

“Corpse”	means the remains of a deceased person and includes a still-born child and foetus;
“Council” means-	<ul style="list-style-type: none">a) the Thembisile Municipality Council; orb) a structure or person exercising a delegated power or carrying out an instruction, where 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); orc) a service provider fulfilling a responsibility under these by-laws assigned to it in terms of section 81 (2) of the Local Government: Municipal System Act, or any other law, as the case may be;
“Cremation“	means the process whereby a corpse is disposed of by fire;
“Crematorium”	means a crematorium as defined in section 1 of the Ordinance and includes the building 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 corpse from its grave;
“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 or crematorium set aside for the erection of memorial work of remembrance;
“Grave”	means a piece of land, within a cemetery or heritage site, excavated for the burial of a corpse and includes the headstones, 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 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 section 33 and 39 of the Health Act, 1977(Act 63 of 1977), and 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. PURPOSE

The purpose of this by-law is to protect the dignity of its residents and to be aware that a corpse is to be granted respect, and that all its residents have the right and the duty to enter a corpse in a cemetery or to cremate a corpse in a crematorium.

3. APPLICATION OF BY-LAWS

These By-laws apply to all funeral undertakers' premises and to cemeteries, Crematoria and other places of other places of interment as determined by the Council, within the Thembisile municipality area, and to persons making use of such funeral undertakers' premises, cemeteries, crematoria and other places of interment.

4. FUNERAL UNDERTAKERS' PREMISES

- 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.
- 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 powers as granted in such law, and the Council may furthermore grant other powers to an official as the Council may deem necessary from time to time.

5. GENERAL PROVISIONS RELATING TO CEMETRIES AND CREMATORIA**5.1 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 Accommodate these within the framework of these By-laws.

5.2 Keeping to path

Except for purpose permitted by these By-laws, a person may only use a path provided in the cemetery, and failure to do so constitutes an offence.

5.3 Prohibited conduct within cemetery and crematorium

- (1) No person may-
 - a) commit or cause a 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 cemetery or crematorium;
 - f) interrupt during the performance of his or her duties an official, workman or laborer 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-laws 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 crematorium;
 - j) use water for any form of gardening without the permission for the caretaker;
 - k) plant trees, flowers or shrubs on 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;
 - n) enter or leave a cemetery or crematorium, except by an entrance provided for the purpose;
 - o) solicit any business, order or exhibit, or distribute or leave a tract, business card or advertisement within 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 business;
 - r) with the exception of a build person, bring an animal into a cemetery or crematorium; and
 - s) expose a corpse or a part thereof in a cemetery or crematorium.
- (2) An animal found in a cemetery or crematoria may be destroyed by the Council without paying any compensation to the owner thereof
- (3) A person who contravenes a provisions of subsection (1) commits an offence.

5.4 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 right or interest as may be obtainable under these By-laws.

- 2) The Council may on payment of the fee prescribed in Schedule 2, which Schedule refers, sell to a person the use of a grave in a section of a cemetery for a period not exceeding 20 years.
- 3)
 - 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 purpose, whereby the environmental advantages of cremation as an alternative to burial is stressed.
 - c) The Council may, if compelled to do so by environmental considerations, such as shortage of land for burial, and subject to the provisions of any other law regarding the rights of a person, request that a corpse be cremated instead of interred.

6. GENERAL PROVISIONS RELATING INTERMENT AND CREMATION

6.1 Consent required for interment and cremation

- 1) No person may dispose of a corpse in any other manner than by interring it in a cemetery or having it cremated in a crematorium, and a person who wishes to dispose of a corpse must obtain the written consent of the caretaker before he or she dispose.
- 2) A person who wishes to obtain the consent as contemplated in Subsection(1) must submit to the caretaker an application in writing in a form similar to the form in Schedule 1 together with-
 - a) the fee prescribed in Schedule 2;
 - b) a death certificate;
 - c) a burial order issued in terms of the Birth and Deaths Registration Act, 1992, and the caretaker may not approve the application unless all the above requirements are met.
- 3) An application must be submitted to the caretaker, in respect of-
 - a) an interment where the Council is responsible for the digging of the grave, not later than 15: 00 on the day before the intended interment or, where the grave exceeds the standard size, not later than 15: 00 two days before the intended interment; and
 - b) a cremation, not later than 15: 00 on the day before the intended cremation.
- 4) 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 a grave, notice of the alteration must be given to the caretaker at the cemetery at least six hours made on monies paid in respect of the opening of an existing grave.
- 5) The application contemplated in subsection (2) must be signed by the nearest surviving relative of the deceased person whose corpse 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 caretaker is satisfied that the signature of the nearest surviving relative cannot be obtained timorously, or for any other valid reason, he or she may in his or her discretion grant an application signed by any other interested person.

- 6) 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 said material or pacemaker was removed from the corpse.
- 7) A person who contravenes subsection (5) or subsection (6) commits an offence.

7. INTERMENT

7.1 Interment and cremation times

- 1) An interment and cremation may take place between 09: 00 and 16: 00 on week days and between 09: 00 and 12:00 on Saturdays.
- 2) Despite the provisions of subsection (1), the caretaker 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) in which case an additional fee as prescribed in Schedule 2 is payable.
- 3) A person who interrs or cremates a corpse in contravention of the provisions of subsection (1) or (2) commits an offence.

7.2 Register

The caretaker must keep a record of all interments, and the record must contain:

- a) The particulars of the person who requested the interment or cremation
- b) the particulars of the deceased person whose corpse is to be interred or cremated, such as the name, address, and identification number;
- c) the date of the interment or cremation; and
- d) in the instance of an interment, the number of the grave in which the Corpse is interred.

7.3 Indigent and destitute persons

- 1) A person may apply to the Council for the burial or cremation of the corpse of an indigent person and must provide proof that the deceased was granted the status as indigent person in terms of section 19 of the Customer Care and Revenue Management By-laws, 2004 and the Council shall decide if the corpse is to be cremated.

- 2) Subject to the provisions of section 48 of the Health Act, 1977, and section 10 of the Human Tissue Act, 1983, the corpse of destitute person or an unclaimed corpse may be buried or cremated according to conditions determined by the Council.
- 3) Where a corpse contemplated in subsection (1) or (2) is cremated, the caretaker of the crematorium where the corpse was cremated must retain the ashes, and should the ashes not be claimed, bury the ashes in a grave.

7.4 Number of corpses in one coffin

- 1) Subject to the provisions of subsection(2), only one corpse may be contained in a coffin
- 2) More than one corpse may be contained in one coffin on the consent of the Caretaker first having been obtained and the fee prescribed in Schedule 2 having been paid, in the case of-
 - (a) a mother and child who died during childbirth; or
 - (b) family members who-
 - (i) died together; or
 - (ii) died a short while after other each other, and the burial or Cremation of the first dying member has not yet taken place.
- 3) A person who contravenes a provision of subsection (1) or who fails to obtain the consent as contemplated in subsection (2) commits an offence.

7.5 Dimensions of graves and apertures

- 1) The standard dimensions of a grave are as follows:
 - (a) Adult:
 - (i) Single grave: Length: 2200 mm; Width: 900mm.
 - (ii) Double grave: Length 2200mm; Width: 2700 mm.
 - (b) Child:
Single grave: Length: 1500 mm; Width: 700mm.
- 2) Any person requiring an aperture for an interment in an adult's grave of a size larger than the standard dimensions must, when submitting an application in terms of section 13, specify the measurement of the coffin, and pay the charges fee prescribed in Schedule 2 for enlarging the aperture.
- 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.

7.6 Depth of grave

- 1) An adult's grave is 1900mm in depth and that of a child 1500mm in depth.

- 2) The lid for 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.
- 3) A person, other than an employee of the Council, who digs a grave in contravention of the dimensions stipulated in subsection (2), commits an offence.

7.8 Reservation of grave

- 1) A person desiring to reserve the use of a grave must apply therefore to the caretaker and must pay the fee prescribed in Schedule 2.
- 2) 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 (3).
- 3) In the event of an interment of a husband or wife in the monumental section, only one addition adjoining grave may not be reserved for the survivor, however, subject to the provisions of section 23, the interment of the survivor may be permitted in the same grave.
- 4) Where another person, other than the applicant, has mistakenly used a grave, the caretaker must allocate another grave within the cemetery to the applicant.

7.9 Child's coffin too large

Should a child's coffin be too large the dimension of a child's grave, it must be place in an adult grave and the prescribed fee for an adult's interment must be paid by the person submitting an application in terms of section 13, and in the instance where a child is referred in a section intended for adult the fee applicable to adults applies.

7.10 Construction material of coffin

- 1) A coffin interred in a grave must be constructed of wood or biodegradable material.
- 2) A person who interrs a coffin in contravention of subsection (1) commits an offence.

7.11 Number of bodies in one grave

More than one corpse may be interred in a single grave.

7.12 Coffin to be covered with earth

The person contemplated in section 13(1) must ensure that a coffin, upon being placed in a grave, is covered without delay with at least 300 mm of earth, and failure to do so constitutes an offence.

7.13 Religious ceremony

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

7.13 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 routes set aside for that purpose.
- 3) A person who contravenes subsections 1) or (2) commits an offence.

7.14 Instruction of caretaker

A person taking part in a funeral procession or ceremony in a cemetery must follow instructions by the caretaker, and failure to do so constitutes an offence.

7.15 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 permission of the caretaker must be obtained.
- 2) A person who contravenes subsection (1) commits an offence.

7.16 Interment attended by more than fifty people

In any instance where it is probable that more than 50 people will be present at an interment, the person submitting an application in terms of section 13, must notify the fact to the caretaker the day before the funeral, and failure to do so constitutes an offence.

7.17 Occupation of chapel or shelter

- 1) No person may for the purpose of occupying a chapel or shelter in a cemetery for more than 45 minutes.
- 2) A person who contravenes subsection (1) commits an offence.

7.18 Number on grave

- 1) No person may inter a corpse in a grave on which a peg marked with the number of the grave has not been fixed.
- 2) A person who contravenes subsection (1) commits an offence.

8. EXHUMATION OF CORPSE AND RE-OPENING OF GRAVE**8.1 Disturbance of mortal remains**

- 1) Subject to the provisions of an exhumation order given in terms of section 3(4) of the Inquest Act, 1959 any other provision of any Act relating to the exhumation of corpse-

- a) no corpse or mortal remains or ground surrounding it in a cemetery may be disturbed;
 - b) no grave may be re-opened; and
 - c) no corpse may be removed from the grave, without the consent of the Council and the medical officer of health.
- 2) The fees for exhumation prescribed in schedule 2 must be paid to the caretaker at least two days before the date fixed for the exhumation or removal of the corpse.
 - 3) A person who contravenes subsections (1) commits an offence.

8.2 Time of exhumation

- 1) No person may exhume or cause a corpse to be exhumed during such time as the cemetery is opened to the public.
- 2) A person who contravenes subsection (1) commits an offence.

8.3 Re-opening of grave

- 1) No person may re-opened a grave for the purpose of interring a second corpse 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 interment of the first corpse;
 - 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 Schedule 2 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 corpse.

9. CARE OF GRAVES

9.1 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.

9.2 Care of grave

- 1) The maintenance of a grave is the responsibility of the person contemplated in section 12 (2).
- 2) The Council may, on application by a person contemplated in subsection (1) and upon payment of the fee prescribed in Schedule 2, 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.

10. CREMATION

10.1 Receptacles and ashes

- 1) Unless the ashes are to be buried by the Council, the person contemplated in section 13(1) 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).
- 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.

10.2. Burial and exhumation of ashes

- 1) In the absence of an arrangement between the caretaker 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 Schedule 2-
 - (i) give writing consent to the application 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 610 mm in width, and 610 mm in depth.

10.11 Cremation certificate

- 1) On completion of a cremation, the caretaker must supply a cremation certificate to the person contemplated in section 37(1).
- 2) The caretaker must, on application and after receipt of the fee prescribed in Schedule 2, issue a duplicate cremation certificate to a person.

11. ERECTION OF MAINTENANCE OF MEMORIAL WORK

11.1 Consent of Council

- 1) No person may bring into a cemetery, erect, alter, paint, clean, renovate, decorate, remove or otherwise interfere with any memorial work or cut any inscription in a cemetery without the written consent of the Council.
- 2) When erecting a memorial work, the following must be submitted:
 - a) A plan which gives an indication of the measurements and the positions;
 - b) specification of the material of which the memorial work is to be constructed; and
 - c) the working of the epitaph.
- 3) The plan must be accompanied by the fee prescribed in Schedule 2, and the Council, when granting consent, may impose such conditions as it deems necessary.
- 4) 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.
- 5) The Council consent of the proposed work is valid for six months only, and in the event of memorial work not being erected within the prescribed time a new application must be submitted.
- 6) The grave number must be indicated, in a workmanlike manner, in figures 30 mm in size, and failure to do so constitute an offence.
- 7) A person who contravenes a provision of subsection(1) or (4)(a) commits an offence

11.2 Requirement for erection of memorial work

- 1) A person erecting a memorial work must comply with the following:
 - a) He or she must be in possession of a plan approved by the Council;

- b) all work must be effected according to the conditions contemplated in section 40(3);
 - c) proceedings must be of such a nature that no damage be caused to any structure or offence given;
 - d) where a memorial has a pedestal on ground level or on the berm, the pedestal may not be more than 900 mm in length, 250 mm in width and 250 mm in height for a single grave, and not more than 2700 mm in length, 250 mm in width, and 250 mm in height for a double Grave;
 - e) with the contractor's permission, the name of the maker 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 large than 40 x 100 mm; and
 - f) tiles in the Garden of Remembrance must be 240 mm x 300 mm large and must be manufactured out of non-corrosive metal
- 2) A person who does not comply with a provision in subsection (1) commits an offence.

11.3 Position, movement and removal of memorial work

- 1) No person may erect a memorial work on a grave before the position in which such memorial work is to be placed has been indicated by the Council.
- 2) Should the condition of subsection (1) not be complied with the Council has the right to alter the position of the memorial work and to recover 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 Council or its employee, any alteration of the position in terms of the provisions of this section is executed at the Council.
- 4) A memorial work placed, erected, constructed, built, altered, decorated, painted or otherwise dealt with in a cemetery in such manner that any provisions of these By-laws are contravened thereby, may be removed, after due notice, by the council at the cost of the person who erected the memorial work, without payment of any compensation.

11.4 Repairs to memorial work

Should the person who erected a memorial work allow such memorial work to fall into such a state of disrepair that it may cause a Notice of Council may cause of Compliance, as contemplated in section 64, to serve on such person.

11.5 Supervision of work

A person engaged upon any work in a cemetery must effect the work under the supervision of the caretaker, and failure to do so constitutes an offence.

11.6 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.

11.7 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 ground or structure of the cemetery.
- 2) A person who contravenes subsection (1) commits an offence.

11.8 Vehicle and tools

Every person engaged with work upon a grave or plot must ensure that the vehicle, tools or appliances are of such a kind as not to contravene these By-laws and by no means block any road or roads, and failure to do so constitute an offence.

11.9 Complying with Council's directions

A person carrying on work within a cemetery must in all respects comply with the directions of the Council, failure to do so constitute an offence.

11.10 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 purpose, within a cemetery except during the following hours: Mondays to Fridays 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) A person who contravenes subsection (1) or (2) commits an offence

11.11 Inclement weather

- 1) No person may fix or place any memorial work during inclement weather or while the soil is in an unsuitable condition.
- 2) A person who contravenes subsection (1) commits an offence.

11.12 Production of written permission

A person charged with a work or on his or her way to or from with 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, and failure to do so constitutes an offence.

11.13 Memorial work in crematorium

- 1) Unless a corpse was cremated in the crematorium, or a cremation certificate Issued by another crematorium is submitted, no person may, without the consent of the caretaker first having been obtained, erect a memorial work 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 250 mm in width, 305 mm in length, and 25 mm in thickness;
 - b) if 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, 2 m in height, 610 mm in length, And 610 mm in width.
- 3) A person who erects a memorial work in contravention of subsection (1) or who contravenes a provision of subsection (2) commits an offence.

12. SECTION IN CEMETERY

12.1 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.

12.2. 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 measurement:
 - a) Height: 2000 mm;
 - b) Width: 900 mm in case of a single grave, and 700 mm in case of a double grave.
 - c) Thickness: 250 mm.
- 2) The Council 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 leveled.
- 4) A person commits an offence of he or she-

- a) exceed the measurements stipulated in subsection (1) ; or
- b) contravenes section (3).

12.3 Garden 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 exceed 300 mm x 150 mm in size.
- 3) Flowers and wreaths may be placed on the places of provided therefore only.
- 4) A person who contravenes a provision of subsection (2) or (3) commits an offence.

12.4 Heroes acre

- 1) A heroes' acre consists of a structure erected for the purpose and contains no corpse but is a memorial only.
- 2) No person may erect such structure without the written approval of the Council and the Council decides upon the merits of such matters.
- 3) The size of the structure must be 500 mm x 350 mm 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.
- 4) A person who inter a corpse in contravention of subsection (2) or who fails to comply with the requirement of subsection (3) commits an offence.

12.5 Aesthetic section

- 1) Only a headstone may be erected, and a slab may not be erected on, and a kerb may not be erected around a grave.
- 2) The dimensions of a headstone are as follows:
 - a) Adult's grave:
 - i. Single grave: 900 mm in length by 260 mm in width.
 - ii. Double grave: 2200 mm in length by 260 mm in width.
 - b) Child's grave:
 - i. Single grave: 610 mm in length by 260 mm in width.
 - ii. Double grave: 1200 mm in length by 260 mm in width.
- 3) No headstone may exceed a height of 1500 mm above the berm.
- 4) A person who contravenes a provision of this section commits an offence.

12.6 Panoramic section

- 1) Only a plaque may be embedded, which plaque must be –
 - a) made of marble, granite or stainless steel;
 - b) 500 mm in length, 500 x mm in width, and 30 mm thick.
 - c) embedded-
 - i. 30 mm below the level of the grass;
 - ii. horizontally on ground level; and
 - iii. on a concrete foundation.
- 2) A person who contravenes a provision of subsection (1) commits an offence.

13. PRIVATE CEMETERIES

13.1 By-laws apply

The provisions of these By-laws apply mutatis mutandis to private cemeteries.

13.2 Establishment and continued use of cemeteries

- 1) No person may, without the Council's consent first having been obtained, establish a private cemetery, and no proprietor of a private cemetery already in existence may, if the use of the cemetery was not previously authorized by the Council, continue to use the existing cemetery for burial purpose.
- 2) A person who wishes to apply for the Council's consent to establish a cemetery or Use as cemetery as contemplated in subsection (1), must submit to the Municipal Manager an application in a form similar to the form in Schedule 3, which schedule refers, in writing together with-
 - a) a locality plan to a scale of not less than 1: 10 000 which shows-
 - i. the position of the proposed cemetery or existing cemetery in relation to the boundaries of the land on which it is situated as the case may be;
 - ii. the registered description of the site;
 - iii. all streets, public places and privately-owned property within a distance of 100 meters of the site;
 - b) a " block" plan to a scale of not less than 1:500 showing the position of external boundaries, internal roads and paths, subdivisions, grave sites, drainage and any building existing or proposed to be erected;
 - c) a plan and sections to a scale of not less than 1:100 of any building existing or proposed to be erected, and which must in this case conform with the National Building Regulations and the Water Services and Sanitation By-laws of the Nelson Mandela Metropolitan Municipality;
 - d) a list of registers or records kept or proposed to be kept with reference to-

- i. identification of graves;
 - ii. sale of grave sites transfer of grave sites; and
 - iii. interments;
- e) the full name and address of the proprietor;
 - f) particulars regarding the nature of the title under which the proprietor will hold or holds the land on which the cemetery is to be established or which is being used as a cemetery and whether such land is subject to any mortgage or trust; and
 - g) a schedule of the burial fees proposed to be charged or actually in force.
- 3) On receipt of an application the Municipal Manager must cause to be inserted in one or more newspapers circulating in the municipal area a notice stating the nature of the application and specifying the date being not less than 14 days after the date of publication of such notice by which objections to the granting of an application may be lodged with the Council.
 - 4) The Council may, upon receipt of the payment by the applicant of the fee prescribed in Schedule 2 and if satisfied after consideration of the application and may objections which may have been lodge that no interference with any public amenity, or nuisance or danger to the public health is likely to take place or arise as a result, in writing grant consent for the establishment of the proposed private cemetery or the continued use of the private cemetery as the case may be, referred to in the application, in accordance with the plans submitted and to any variation or amendment which it may require and to any condition which it may prescribe.
 - 5) No departure from the plans as approved are permitted without the prior approval of the Council.
 - 6) A person who contravenes a provision of subsection (1) or (5) commits an offence.

13.3 Duties of Proprietors

- 1) The proprietor of a private company cemetery for which the consent of the Council has been obtained must-
 - a) comply with-
 - i. any special conditions prescribed by the Council; and
 - ii. the relevant provisions of these By-laws and any other applicable law;
 - b) keep a record which shows-
 - i. the number of each grave site and the ownership of the site; and
 - ii. the number of interments in each grave site and the name, age, sex, race, last known address, date and cause of death of the deceased;
 - iii. maintain the grounds, fences, gates, roads, paths and drains in good order and condition and clear of weeds and overgrowth;

- iv. provide for the identification of grave sites by subdividing the cemetery into blocks each containing a number of graves or grave sites, and-
- v. each block must be demarcated by means of signs showing the number and situation of each block;
 - c) the graves or grave sites in each block must be separately numbered by means of durable number plates; and
 - d) all signs and number plates must be maintained in a neat and legible condition;
 - e) allow an official to enter or inspect the cemetery and all records kept in connection therewith;
 - f) render a monthly return to the municipal manager on or before the 7th day in each month of all burials, which sets out the-
 - i. name, last known address, age, sex, race, date and cause of death of each deceased person interred in the cemetery;
 - ii. name of the medical practitioner who issued the death certificate;
 - iii. authority who issued the burial order;
 - iv. block and grave site number;
 - v. date of burial; and
 - vi. particulars of a change in identity of the caretaker or of a person newly appointment;
 - g) render an annual return to the municipal manager on or before the 31st day of March each year which contains a detailed list of the name and addresses of all trustees, committee members or persons controlling the cemetery; and
 - h) appoint a caretaker to manage the cemetery and to keep the records.
- 2) A person who contravenes a provision of subsection (1) commits an Offence.

14. MISCELLANEOUS

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

- 1) An order, notice or other document requiring authentication by the Council must be sufficient officer of the Council signed by the Municipal Manger or by a duly authorized officer of the Council; such authority being conferred by resolution of the Council in terms of these By-laws shall be deemed to be duly issued if it is signed 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 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 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),(b) or (c);
 - e) if that person's address and agent or representatives in the Republic is unknown, 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 municipal when it is delivered to the municipal manager or a person in attendance at the municipal manager's office.

14.2. Complaint

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

14.3. Notice of compliance and representatives

- 1) A notice of compliance served in terms of section 43 must-
 - 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 specified time period take the measures to comply with the notice, to diligently continue with
 - e) the period contemplated in paragraph (d) is an offence;
 - f) that written representatives, as contemplated in subsection(3) may, within the time period stipulated under paragraph (d) above, be made to Council at a specific place.
- 2) Council, when considering any measure or time period envisaged in
 - a) the principles and objectives of these By-laws;
 - b) the state of disrepair; imposed; and
 - c) any other relevant factors.
- 3) A person may within the time period contemplated in paragraph (1) (f) make representations, in the form of a sworn statement or affirmation to Council at the place specified in the notice.
- 4) Representations not lodge within the time period will not be considered, except where the person has shown good cause and Council condones the late lodging of the representations.

- 5) Council must consider the representations and any response thereto by an authorized official or any other person, if there be such a response.
- 6) Council may, on its own volition, conduct any further investigation to verify the facts if necessary, and the results of the investigation must be made available to the person, who must be given an opportunity of making a further response if he or she so wishes, and Council must also consider the further response.
- 7) Council must, after consideration of the representations and response, if there be such a response, make an order in writing and serve a copy of it on the person.
- 8) The order must
 - a) set out the findings of Council;
 - b) confirm, alter or set aside in whole or in part, the notice of compliance; and
 - c) specify a period within which the person must comply with the order made by Council.
- 9) If the notice of compliance is confirmed, in whole or part, or is altered but not set aside, Council 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 Council 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 obligation under the order.
- 12) Where there has been no compliance with the requirement of a notice, the Council may take such steps as it deems necessary to repair the monumental work and the cost thereof must be paid to the Council in accordance with section 65.

14.4. Costs

Should a person fail to take the measures required of him or her by notice, Council may, subject to subsection (3) recover all costs incurred as a result of it acting in terms of paragraph 64(12) from the person.

14.5. Appeal

- 1) A person, whose rights are affected by 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 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 accrued as a result of the decision.
- 3) The municipal manager must commence with an appeal within a reasonable time.

14.6. 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.

14.7. 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.

14.8. Short title and commencement

The By-laws may be cited as the Thembisile Funeral Parlours, Cemeteries and Crematoria By-laws, 2012 and commence on a date as determined by the Council.

SCHEDULE 1
(Section 13(2))

APPLICATION FORM FOR BURIAL / CREMATION

Name of applicant

Address of applicant

Name of diseased person to be interred

Particulars of diseased person

**SCHEDULE 2
(Section 60(2))**

APPLICATION FORM FOR PRIVATE CEMETERY

EXISTING FORM TO BE USED OR ADAPTED WHERE NECESSARY.