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LOCAL AUTHORITY NOTICE

LOCAL AUTHORITY NOTICE 14

The Constitution of the Republic of South Africa, Act 108 of 1996 read with the Local Government: Municipal Systems Act gives municipalities powers to regulate various matters in their areas of jurisdiction by enacting municipal by-laws.

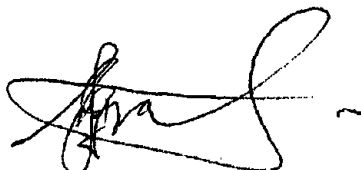
The communities of INKWANCA Municipality desires that certain aspects in their areas should be regulated by their Council and to this end have mandated their Council to enact certain by-laws.

Through various public participation programmes, Council identified the following three by-laws as the priority by-laws that must be promulgated namely:

- **By-law relating to the keeping of Dogs,**
- **Street Trading By-laws,**
- **Cemeteries and Funeral Palour By-Laws.**

It is against this background that the said by-laws are hereby dispatched for publication.

M. STRATU
MANAGER: COMMUNITY SERVICES



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

INKWANCA LOCAL MUNICIPALITY STREET TRADING BY-LAW

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1. Definitions

(1) In this by-law, unless the context otherwise indicates —

“Act” means the Businesses Act, 1991 (Act 71 of 1991), and includes the regulations promulgated under the Act;

“approval” means approval by the Municipality and “approve” has a corresponding meaning;

“garden” means a garden to which the public, has a right to access;

“goods” means any movable property;

“intersection” means an intersection as defined in the regulations promulgated in terms of the National Road Traffic Act, 1996 (Act 93 of 1996);

“litter” means any object or matter which is discarded by a person;

“motor vehicle” means a motor vehicle as defined in section 1 of the National Road Traffic Act, 1996 (Act 93 of 1996);

“Municipality” means the Inkwanca Local Municipality and includes any political structure, political office bearer, councillor, duly authorised agent thereof or any employee acting in connection with this by-law by virtue of a power vested in the

municipality and delegated or sub-delegated to such political structure, political office bearer, councillor, agent or employee;

"Municipal Manager" is the person appointed by the Municipality in terms of Section 82 of the Municipal Structures Act, 1998 and includes any person:

(a) acting in such position; and

(b) to whom the municipal manager has delegated any power, function or responsibility in as far as it concerns the execution of those powers, functions or duties.

"official" means a designated officer who is authorized by the Municipality to perform and exercise any or all of the functions and powers contemplated in this by-law;

"park" means a park to which the public has a right to access;

"premises" includes any land, building, structure, part of a building or of a structure, or any vehicle, conveyance, vessel or aircraft;

"prescribed" means prescribed by the Municipality by resolution;

"property", in relation to a street trader, means goods in which a street trader trades, and includes any article, container, vehicle or structure used or intended to be used in connection with street trading by the street trader;

"public amenity" means

(a) any land, square, camping site, caravan park, beach, swimming pool, public open space, public resort, recreation site, river, dam, nature reserve, zoo-logical, botanical or other garden, or hiking trail, including any portion thereof and any facility or apparatus therein or thereon, which is the property of, or is possessed, controlled or leased by the municipality and to which the general public has access, whether on payment of admission of fees or not, but excluding a public road or street;

(b) a building, structure, hail room or office, including any part thereof or any facility or apparatus therein, which is the property of, or is possessed, controlled or leased by the municipality and to which the general public has access, whether on payment of admission of fees or not; and (c) a public amenity contemplated in paragraphs (a) and (b) if it is lawfully controlled or managed in terms of an agreement between a person and the municipality;

"public road" means a public road as defined in section 1 of the National Road Traffic Act, 1996 (Act 93 of 1996);

"roadway" means a roadway as defined in section 1 of the National Road Traffic Act, 1996 (Act 93 of 1996);

"sell" includes barter, exchange, hire out, display, expose, offer or prepare for sale, store with a view to sell, or provide a service for reward, and "sale" or "selling" has a corresponding meaning;

"sidewalk" means a sidewalk as defined in section 1 of the National Road Traffic Act, 1996 (Act 93 of 1996);

"street furniture" means any furniture installed by the municipality on the street for public use;

"street trader" means a person who, as hawker, vendor or pedlar as contemplated in the Businesses Act, 1991 (Act 71 of 1991), carries on the

business of the selling of any goods or the supplying of or offering to supply any service for reward in a public road or public amenity;

"street trading" means the carrying on of the business as a street trader;

"verge" means a verge as defined in section 1 of the National Road Traffic Act, 1996 (Act 93 of 1996), and

any words or expressions to which a meaning has been assigned in the Businesses Act, 1991, (Act 71 of 1991) have a corresponding meaning in this by-law.

(2) A single act of selling or offering or rendering of services in a public road or public amenity constitutes street trading.

(3) A reference to a person carrying on the business of street trader includes the employee of the person.

2. Principles and objectives

The Municipality, acting in terms of section 6A(1)(a)(i) of the Businesses Act, 1991 (Act 71 of 1991), and -

- (a) having regard to the principles set out in the Act and in the Constitution;
- (b) taking into consideration the need of the residents to actively participate in economic activities; and
- (c) taking into consideration the need to maintain a clean and healthy environment, in this by-law provides mechanisms, procedures and rules to manage street trading.

3. Application

This by-law applies to all persons who carry on the business of street trading within the area of jurisdiction of the Inkwanca Local Municipality.

CHAPTER 1 : GENERAL PROVISIONS APPLICABLE TO STREET TRADING

4. Restricted and prohibited areas

- (1) The Municipality may, in terms of section 6A(2)(a) of the Act and subject to the provisions of paragraphs (b) up to and including (j), declare any place in its area of jurisdiction to be an area in which street trading is restricted or prohibited.
- (2) The municipality shall by public notice and by erected signs, indicate such areas and the notice and sign must indicate —
 - (a) the restriction or prohibition against street trading;
 - (b) if street trading is restricted —
 - (i) the boundaries of the area or stand set-aside for restricted street trading;
 - (ii) the hours when street trading is restricted or prohibited; and
 - (iii) the goods or services in respect of which street trading is restricted or prohibited; and
 - (c) that the area has been let or otherwise allocated.

- (3) The Municipality may change the areas contemplated in subsection (1) if the needs and circumstances of residents and street traders demand such reconsideration.
- (4) A person who carries on the business of a street trader in contravention of a notice contemplated in subsection (2) commits an offence.

5. Places where street trading is prohibited

- (1) Unless the Municipality has so permitted in terms of an agreement or by means of the display of a sign, no person may carry on the business of a street trader in any of the following places:
 - (a) In a garden or a park to which the public has a right of access; or
 - (b) on a verge contiguous to —
 - (i) a building belonging to, or occupied solely by, the State or the municipality;
 - (ii) a church or other place of worship; or
 - (iii) a building declared to be a public monument under the National Heritage Resources Act, 1999.
- (2) No person may carry on the business of a street trader in any of the following places:
 - (a) in a place declared by the Municipality under section 6A(2)(a) of the Act as a place in which street trading is prohibited;
 - (b) at a place where street trading obstructs the use of the sidewalk by pedestrians or interferes with the ability of persons using the sidewalk to view the goods displayed behind a shop display window, or obscures such goods from view.
 - (c) within 5 metres of an intersection as defined in Regulation 322 of National Road Traffic Act, 1996;
 - (d) at a place where street trading obstructs —
 - (i) a fire hydrant;
 - (ii) the entrance to, or exit from, a building;
 - (iii) vehicular traffic;
 - (iv) access to a pedestrian crossing, a parking or loading bay or any other facility for vehicular or pedestrian traffic;
 - (v) access to, or the use, of street furniture or any other facility designed for the use of the general public;
 - (vi) or obscures a road traffic sign that is displayed in terms of the National Road Traffic Act, 1996; or
 - (vii) or obscures a marking, notice or sign displayed or made in terms of this by-law;

- (e) that half of a public road contiguous to a building that is used for residential purposes, if the owner or person who is in control or any occupier of the building objects thereto; or
 - (f) on a portion of a sidewalk or public amenity in contravention of a notice or sign erected or displayed by the municipality for the purposes of this bylaw.
- (3) A person to whom an area or stand has been let or allocated under paragraph (c) of section 6A(3) of the Act shall —
- (a) comply with conditions of the lease of allocation; and
 - (b) be in possession of written proof that Municipality has let or allocated the area or stand to him or her.
- (4) A person who contravenes a provision of this section commits an offence.

6. Duties of street trader

- (1) A street trader shall —
- (a) when he or she concludes business for the day, remove his or her property, except any structure permitted by the Municipality, to a place which is not part of a public road or public amenity;
 - (b) when requested by an official of the Municipality, or by a person who has been authorized to provide municipal services, move his or her property so as to permit the official or other person to carry out any work in relation to a public road, public amenity or service;
 - (c) keep the area or stand occupied by him or her in a clean and sanitary condition;
 - (d) ensure that the area is free of litter, and must, when he or she concludes business for the day, dispose of litter generated by his or her business —
 - (i) at the dumping sites of the Municipality; or
 - (ii) in receptacles provided by the Municipality for the public;
 - (e) on request by an official of the Municipality, move his or her property so as to permit the cleansing of the area where he or she is trading;
 - (f) regarding the size and location of the area or stand occupied by him or her, —
 - (i) ensure that the area which he or she uses does not exceed 6 square metres in size and not exceed 3 metres in length;
 - (ii) ensure that a space of not less than 1,5 metres is left between the wall of the shop (contiguous to which he or she conducts his or her business) and himself or herself and

- (iii) leave a space of not less than 0,5 metre from the kerb of the roadway.
- (2) A person who contravenes a provision of subsection (1) commits an offence.

7. Prohibited conduct

- (1) A street trader —
- (a) shall not sleep or overnight at the area where he or she is trading, or at the area where another street trader is trading;
 - (b) shall not place or stack his or her property in such a manner that it —
 - (i) constitutes a danger to any person or property; or
 - (ii) is likely to injure any person or cause damage to any property;
 - (c) shall not dispose of litter in a manhole, storm water drain or other place not intended for the disposal of litter;
 - (d) shall not release onto a public road or public amenity or into a storm water drain or fat, oil or grease in the course of conducting his or her business;
 - (e) shall not allow smoke, fumes, noise, smells, or other substance arising from his or her activities to cause a nuisance or pollution of any kind;
 - (f) shall not erect a structure for the purpose of providing shelter;
 - (g) shall not place his or her property in a public road or public amenity;
 - (h) who conducts his or her business from a vehicle, shall not park the vehicle or trailer in such a manner as to obstruct pedestrian or vehicular traffic and must ensure that he or she complies with the provisions of the National Road Traffic Act, 1996;
 - (i) shall not place his or her property on a public road or public amenity where it cannot be easily removed to a place of safety at the end of the day's business;
 - (j) shall not display his or her goods or other property on or in a building without the consent of the owner, lawful occupier or person in control of such building or property;
 - (k) shall not attach an object by any means to a building, structure, sidewalk, tree, parking meter, lamp, pole, electricity pole, telephone booth, post box, traffic sign, bench or any other street furniture in or on a public road or public amenity;
 - (i) shall not carry on his or her business in such a manner as to
 - (i) create a nuisance;

- (ii) damage or deface the surface of a public road or public amenity or public or private property; or
 - (iii) create a traffic hazard;
 - (m) shall not make an open fire that poses a health or environment hazard to any person or property or to street furniture;
 - (n) shall not, other than in a refuse: receptacle approved or supplied by the municipality, accumulate, dump, store or deposit any litter on —
 - (i) any land or premises;
 - (ii) any public road or public amenity or;
 - (iii) any public or private property;
 - (o) shall not store his or her property in a manhole, storm water drain, public toilet, bus shelter or in a tree; and
 - (p) shall not carry on such business in a place or area in contravention of any prohibition or restriction approved by the municipality in terms of section 6A(2)(a) of the Act.
- (2) A person who contravenes a provision of subsection (1) commits an offence.

8. Removal and impoundment

- (1) An official who reasonably suspects that property is being used or intended to be used in, or in connection with, street trading, whether or not the property is in possession or under the control of any person may, subject to subsection (2), remove and impound the property which he or she finds at a place where street trading is restricted or prohibited and which constitutes an infringement of any such restriction or prohibition.
- (2) An official who acts under subsection (1) must, except in the case of goods that have been left or abandoned, issue to the street trader a receipt for the property so removed and impounded and the receipt shall contain the following particulars:
 - (a) the address where the impounded property will be kept and the period it will be kept;
 - (b) the conditions for the release of the impounded property; and
 - (c) that unclaimed property will be sold by public auction.
- (3) If any impounded property is attached to immovable property or a structure and the impounded property is under the apparent control of a person present at that place, an official may order the person to remove the impounded property.
- (4) When a person fails to comply with an order to remove the impounded property, an official shall take such steps as may be necessary to remove the impounded property.
- (5) A person who hinders or obstructs an official in the performance of his or her duties under this section, or who refuses or fails to

remove the object when ordered to do so by an official, commits an offence.

9. Disposal of impounded goods

- (1) Any perishable goods removed and impounded in terms of section 8(1) may at any time after the impoundment thereof be sold or destroyed by the Municipality and in the case of a sale of such goods, the proceeds thereof, less any expenses incurred by the Municipality in connection with the removal and impoundment thereof, shall upon presentation of the receipt contemplated by section 8(2)(a), be paid to the person who was the owner thereof when it was impounded. If such owner fails to claim the said proceeds within three months of the date on which it was sold, the proceeds shall be forfeited to the Municipality.
- (2) The owner of any goods other than perishable goods already dealt with by the Municipality in terms of subsection (1) who wishes to claim the return thereof must, within a period of one month of the date of the impoundment thereof, apply to the Municipality and must present the receipt contemplated in section 8(2)(a), failing which the goods may be sold by the Municipality and in the event of a sale thereof the provisions of subsection (1) relating to the proceeds of a sale likewise apply.
- (3) If the owner of any goods impounded in terms of section 8(a) claims the return of the goods from the Municipality and he or she is unable or refuses to refund any expenses incurred by the Municipality in connection with the removal and impoundment, the goods may be sold by the Municipality and the proceeds of any sale thereof, less any expenses, shall be paid to him or her..
- (4) In the event of the proceeds of any sale of goods contemplated by this section not being sufficient to defray any expenses incurred by the Municipality, the owner thereof shall in terms of section 8(3)(a) remain liable for the difference.

10. Penalty

Any person who –

- (1) contravenes or fails to comply with any provision of these by-laws;
 - (2) fails to comply with any notice issued in terms of these by-laws; or
 - (3) fails to comply with any lawful instruction given in terms of these by-laws; or
 - (4) who obstructs or hinders any authorised representative of the Council in the execution of his or her duties under these by-laws -
- is guilty of an offence and liable on conviction to a fine or in default of payment, to imprisonment for a period not exceeding six months, and in the case of a continuing offence, to a further fine not exceeding R50, or in default of payment, to imprisonment not exceeding one day, for every day during the continuance of such offence, after a written notice has been

issued by the Council, and served on the person concerned, requesting the discontinuance of such offence.

11. Responsible person

When an employee of a person who performs an act which contravenes a provision of this by-law, the employer is deemed to have committed the contravention himself or herself, unless he or she proves that —

- (a) he or she did not permit such act;
- (b) he or she took all reasonable steps to prevent the performance of the act; and
- (c) it was not in the scope of the authority or the course of employment of the employee to perform an act which contravenes this by-law.

12. Appeal

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

13. Liaison forums in community

- (1) The Municipality may establish one or more liaison forums in a community for the purposes of—
 - (a) creating conditions for a local community to participate in the affairs of the Municipality; and
 - (b) promoting economic development;
- (2) A liaison forum may consist of—
 - (a) a member of members of an interest group, or an affected person;
 - (b) a designated official or officials of the municipality; and
 - (c) a councillor.
- (3) The Municipality may, when considering an application for an approval, or exemption certificate 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 own initiative provide an input to the Municipality for consideration.

14. Revocation of by-laws

The following by-laws are hereby repealed:

- (a) Any by-law previously promulgated by the Municipality or any of the disestablished municipalities now incorporated into the Municipality, in so far as it relates to any matter provided for in this by-law; and
- (b) Any by-law previously promulgated by the Chris Hani District Municipality or any of its predecessors, in so far as, it has been made applicable to the municipality by the authorisation for the

execution of powers and functions in terms of section 84(3) of the Municipal Structures Act, 117 of 1998..

15. Short title and commencement

This by-law may be cited as the Street Trading By-law and commences on the date of publication thereof in the Provincial Gazette.

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

INKWANCA MUNICIPALITY BY-LAW REGULATING THE KEEPING OF DOGS

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14. Repeal of by-law

1. Definitions

In these by-laws, words used in the masculine gender include the feminine, the singular includes the plural and vice versa and unless the context otherwise indicates: -

“dog” for the purpose of Chapters 3 and 4 of these by-laws means a dog over the age of six months;

“keep” in relation to a dog, includes to have such dog in possession, under control or in custody or to harbour such dog;

“owner”, in relation to a dog, means any person who keeps a dog and includes any person to whom a dog has been entrusted or who has control over a dog on any premises within the area of jurisdiction of the Municipality.

“Municipality” means the Inkwanca Municipality established in terms of Section 12 of the Municipal Structures Act, 117 of 1998 and includes any political structure, political office bearer, councillor, duly authorised agent thereof or any employee thereof acting in connection with these by-laws by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office bearer, councillor, agent or employee;

“premises” means any piece of land registered in a deeds registry as an erf, lot, plot, or stand as part of a township or subdivision, or a stand or lot forming part of a piece of land laid out as a township or subdivision, but not yet registered, or a portion of such erf, stand or lot and includes residential sites outside townships provided by government departments, semi-government institutions or industries.

“public place” means any square, park, recreation ground, sports ground, lane, open space or enclosed place vested in the Municipality or other state authority or indicated as such on the Surveyor General's records or utilised by the public or zoned as such in terms of the applicable zoning scheme or at any time declared or rendered such by the municipality or any other competent authority.

“public road” means any road, street or thoroughfare or any other place which is commonly used by the public or any section thereof or to which the public or any section thereof has a right of access, and includes-

- (a) the verge of any such road, street or thoroughfare;
- (b) any footpath, sidewalk or similar pedestrian portion of a road reserve;
- (c) any bridge, ferry or drift traversed by any such road, street or thoroughfare;
- (d) any other work or object belonging to such road, street or thoroughfare, footpath or sidewalk, and
- (e) any premises with or without structures thereon, used or set aside as a public parking area or public parking place for the parking of motor vehicles whether or not access to such a parking area or place is free of charge.

“SPCA” means the Queenstown branch of the Society for the Prevention of Cruelty to Animals, Act 71 of 1962;

“the Act” means the Animal Protection Act, 52 of 1973

CHAPTER 1 : APPLICATION OF BY-LAW

1. **Agricultural land**

The provisions of sections 4 and 10 of these by-laws shall not apply to premises which are zoned for agricultural purposes, provided that a person keeping dogs on premises so zoned shall not be exempted from compliance with any other provision of these by-laws or any other legislation which may be applicable to such premises.

2. **Working dogs**

The provisions of section 13 shall not apply to-

- (a) a guide dog which is bona fide utilised to accompany a blind person;
- (b) a dog under the control of a person performing a statutory duty under any Act.

CHAPTER 2 : NUMBER OF DOGS

3. **Limitation of numbers**

- (1) Subject to the provisions of section 5, no person shall keep more than two dogs on any premises without the prior written consent of the Municipality.
- (2) Failure to comply with section 3(1) constitutes an offence.

4. **Licensed breeders**

- (1) Licensed breeder of dogs who wishes to keep more than two dogs on –
 - (a) premises zoned for agricultural purposes, shall be entitled to do so without any restrictions.
 - (b) premises zoned for any purpose other than agricultural purposes, must obtain the prior written consent of the Municipality thereto.
- (2) An application for the Municipality's consent in terms of section 4 shall not be considered by the Municipality unless it is satisfied that the size of the premises on which the dogs are to be kept is not less than 5 000 m².
- (3) The Municipality's consent in terms of section 4(2) to keep more than two dogs on a premises, shall be granted subject to such conditions and restrictions as the municipality may deem fit to impose.
- (4) The Municipality may at any time revoke a consent granted in terms of section 5(2).
- (5) Failure to comply with section 4(1)(b) constitutes an offence.

CHAPTER 3 : CONTROL OF DOGS

5. **Dogs to be kept under control**

No person shall-

- (1) (a) permit any bitch on heat owned or kept by him to be in any public road or public place without supervision;

- (b) urge any dog to attack, worry or frighten any person or animal, except where reasonably necessary for the defence of such first-mentioned person or his property or the property of any other person;
- (c) keep any dog which –
 - (i) by barking, yelping, howling or whining;
 - (ii) by having acquired the habit of charging any vehicles, animals, poultry, pigeons or persons outside any premises where it is kept, or
 - (iii) by behaving in any other manner- interferes materially with the ordinary comfort, convenience, peace or quiet of neighbours, or
- (d) permit any dog owned or kept by such person –
 - (i) to be in any public road or public place while suffering from mange or any other infectious or contagious disease;
 - (ii) which is ferocious, vicious or dangerous to be in any public road or public place, unless it is muzzled and held on a leash and under control of himself or some responsible person;
 - (iii) to trespass on private property;
 - (iv) to constitute a hazard to traffic using any public road;
 - (v) to constitute or to his knowledge be likely to constitute a source of danger or injury to any person outside the premises on which such dog is kept, or
 - (vi) to be in any public road or public place except on a leash and under control of some responsible person.
- (2) The keeping of all dogs on any premises shall be subject to the provisions of the Act.
- (3) Failure to comply with the provisions of section 5 constitutes an offence.

CHAPTER 4 : FENCING OF PROPERTY

6. Property to be fenced

- (1) No person shall keep a dog if the premises where such a dog is kept, is not properly and adequately fenced to keep such dog inside the confines of such premises when it is not on a leash.
- (2) Failure to comply with the provisions of section 6(1) constitutes an offence.

CHAPTER 5 : DANGEROUS DANGER

7. Protection of employees

- (1) Any person who keeps a dog shall on any premises, including premises zones for agricultural use, shall-
 - (a) keep such dog in such manner as not to be a source of danger to employees of the Municipality entering upon such premises for the purpose of carrying out their duties.
 - (b) display a notice in English or Afrikaans and isiXhosa at all entrances to such premises to the effect that a dog is being kept on such premises.
 - (c) ensure that a bell or other such device is fitted at the main entrance to the premises to alert the occupier of the premises, that entrance is sought by employees of the Municipality.

- (2) The owner and occupier of any such premises shall remain jointly liable for the payment of any damages arising from any injury to a municipal employee caused by a dog, or by dogs under his or her control, whether such injury was caused inside such premises or immediately outside such premises.
- (3) Failure to comply with the provisions of section 7(1) constitutes an offence.

CHAPTER 6 : DOGS AND PUBLIC HEALTH

8. Duty to cleanse dog droppings

- (1) If any dog defecates in any public road or public place, any person in charge of such dog shall forthwith remove the excrement by placing it in a plastic or paper bag or wrapper and disposing of it in a receptacle provided for the deposit of litter or refuse.
- (2) Failure to comply with section 8(1) constitutes an offence.

CHAPTER 7 : DOGS ON PREMISES WHERE FOOD IS SOLD

9. Duty on shop owner or person in control

- (1) Any person being the owner or person in control of any shop or other place where food is prepared, sold or exposed for sale, shall not permit any dog to be or remain in or at such shop or place.
- (2) Failure to comply with section 9(1) constitutes an offence.

CHAPTER 8 : SEIZURE, IMPOUNDING AND DESTRUCTION OF DOGS

10. Removal from public places

- (1) If any dog suffering from mange or any other infectious or contagious disease, or which is ferocious, vicious or dangerous, or which is badly injured is found in any public road or public place, it may be seized and destroyed by the municipality.
- (2) The provisions of 10(1) apply to any dog which is found in any public road or public place in contravention of the provisions of these by-laws.
- (2) Any dog seized in terms of 10(1) or 10(2) may be impounded at a place designated by the Municipality.

11. Release to owner

- (1) A dog impounded in terms of section 10 that is not destroyed may be released to the owner of such dog upon payment of a fee determined by the municipality in addition to any costs, fines or taxes which may be outstanding in respect of such dog.
- (2) No dog seized in terms of section 10 shall be released to the owner if-
 - (i) in the opinion of an SPCA Inspector, the release of such dog would constitute an offence in terms of the Act; or
 - (ii) releasing the dog to the owner, or to any other person, is clearly not in the public interest.

CHAPTER 9 : LIABILITY**12. Limitation of liability**

The Municipality shall not be liable for any injury suffered or disease contracted by or damage caused to any dog as a result of or during its seizure, impoundment, detention or destruction in terms of these by-laws.

CHAPTER 10 : PENALTY CLAUSE**13. Penalties**

Any person who contravenes or fails to comply with any provision of these by-laws shall be guilty of an offence and liable upon conviction to a penalty not exceeding –

- (1) a fine or imprisonment for a period of six months or to such imprisonment without the option of a fine or to both such fine and such imprisonment and,
- (2) in the case of a continuing offence, to an additional fine or an additional period of imprisonment of ten days or to such additional imprisonment without the option of a fine or to both such additional fine and imprisonment for each day on which such offence is continued; and
- (3) a further amount equal to any costs and expenses found by the court to have been incurred by the municipality as result of such contravention or failure.

CHAPTER 11 : REPEAL OF BY-LAWS**14. Repeal of by-laws**

Any by-law relating to the keeping of dogs adopted by the Municipality or any municipality now comprising an administrative unit of the Municipality is repealed from the date of promulgation of these by-laws.

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

INKWANCA MUNICIPALITY PUBLIC CEMETERY AND FUNERAL PARLOUR BY-LAWS

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1. Interpretation

In this by-law, 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 15;

“**aesthetic section**” means a cemetery or section of a cemetery which has been set aside by the Municipality where only headstones may be erected;

“**approved**” means approved by the Municipality;

“**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 Births and Deaths Registration Act, 1992 (Act 51 of 1992);

“**caretaker**” means the official whom the Municipality 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 Municipality as a cemetery;

“child” means a person who is not an adult and where the word is used to define a corpse, it means a deceased person whose coffin will fit into the grave opening prescribed for children 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;

“cremation” means the process whereby a corpse is disposed of by fire;

“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 or a wall of remembrance;

“grave” means a piece of land, within a cemetery or heritage site, excavated for the burial of a corpse and includes a headstone, number or marker of and a structure on or associated with a 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 the Municipality 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 to commemorate a deceased person and includes a kerb demarcating a grave and a slab covering a grave;

“municipality” means the Inkwanca Municipality established in terms of Section 12 of the Municipal Structures Act, 17 of 1998, and includes any political structure, political office bearer, councillor, duly authorised agent or any employee acting in connection with this by-law by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office bearer, councillor, agent or employee;

“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 Municipality where memorial work is restricted to a plaque or memorial slab;

“prescribed” means prescribed by the Municipality;

“prescribed fee” means a fee determined by the Municipality in its Customer Care and Revenue Management by-law;

“private cemetery” means a cemetery that is used as a cemetery but which has not been set aside as such by the Municipality;

“Regulations” means the regulations relating to Funeral Undertakers’ Premises, made under sections 33 and 39 of the Health Act, 1977 (Act 63 of 1977), and published as Government Notice No. 237 of 8 February 1985;

“**responsible person**” means the person responsible for an interment;
“**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. **Principles and objectives**

The purpose of this by-law is to control funeral undertaker’s premises, to make provision for the allocation of land for the purposes of the burial of human remains, to develop and maintain existing cemeteries, to permit its residents to provide space allowing the preservation of the remains of a cremation in a dignified manner.

CHAPTER 1 : FUNERAL UNDERTAKERS’ PREMISES

3. **Applicable legislation**

The National Building Regulations and Building Standards Act, 1977 apply in respect of funeral undertaker’s premises.

CHAPTER 2 : GENERAL PROVISIONS RELATING TO CEMETERIES

4. **Appointment of caretaker**

- (1) The Municipality may appoint a caretaker for each cemetery to control and administer the cemetery.
- (2) The caretaker must take into account the customs of the deceased person and the people responsible for the burial must accommodate these within the framework of this by-law;

5. **Hours of admission for public**

- (1) Every cemetery is open to the public during the following hours: 8:00 and 17:00 and if it is in the interest of the public, the Municipality may close a cemetery or a part thereof to the public for such periods as the Municipality deems necessary.
- (2) No person, excluding workers or persons with permission, may be in or remain in a cemetery or part thereof before or after the hours mentioned in sub-section (1) or during a period when it is closed to the public.
- (3) A person who contravenes subsection (2) commits an offence.

6. **Children**

- (1) No child under 12 years of age may enter a cemetery unless under the care of a responsible person.
- (2) A person who allows a child to enter a cemetery in contravention of subsection (1), commits an offence.

7. **Keeping to pathways**

Except for purposes permitted by this by-law, a person may use only a pathway provided in the cemetery and failure to do so constitutes an offence.

8. **Prohibited conduct within cemetery**

- (1) No person in a cemetery may -
 - (a) cause a nuisance;
 - (b) ride an animal, bicycle or vehicle without the permission of the caretaker;
 - (c) allow an animal to wander;

- (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;
 - (f) interrupt an official, workman or labourer employed by the Municipality during the performance of his or her official duties;
 - (g) obstruct, resist or oppose the caretaker in the course of his or her duty or refuse to comply with an order or request that the caretaker is entitled under this by-law to make;
 - (h) mark, draw, scribble, erect an advertisement or object on a wall, building, fence, gate, memorial work or other structure;
 - (i) use water for any form of gardening without the permission of the caretaker;
 - (j) plant trees, flowers or shrubs on or between graves;
 - (k) leave any rubbish, soil, stone, debris or litter;
 - (l) in any way damage or deface any part of a cemetery, grave or memorial work;
 - (m) enter or leave except by an entrance provided for the purpose;
 - (n) solicit any business, order or exhibit, or distribute or leave a pamphlet, business card or advertisement;
 - (o) climb, sit upon or demonstrate disrespectful behaviour on or near a grave or memorial work;
 - (p) enter an office, building or fenced place, except in connection with lawful business;
 - (q) with the exception of a blind person, bring an animal; and
 - (r) expose a corpse or a part thereof.
- (2) A person who contravenes a provision of subsection (1) commits an offence.

9. Right of interest in ground

- (1) No person will acquire any right to or interest in any ground or grave in a cemetery, other than those that may be obtainable under this by-law.
- (2) The Municipality may, on payment of the prescribed fee, 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 Municipality may set aside different areas in a cemetery for exclusive use by different religious or cultural groups.
- (b) The Municipality may promote the environmental advantages of cremation as an alternative to burial.
- (c) The Municipality may, if compelled to do so by environmental considerations including 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 being interred.

CHAPTER 3 : GENERAL PROVISIONS RELATING TO INTERMENT

10. Consent required for interment

- (1) No person may inter a corpse in a cemetery without the prior written consent of the caretaker.
- (2) A person who wishes to obtain the consent as contemplated in subsection (1) must submit to the caretaker an application in writing together with —
 - (a) the prescribed fee;
 - (b) a death certificate;

- (c) a burial order issued in terms of the Births and Deaths Registration Act, 1992, and the caretaker may not approve the application unless all the above requirements have been met.
- (3) An application must be submitted to the caretaker, in respect of an interment where the Municipality 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.
- (4) Should any change be made to the day or hour previously fixed for an interment, or where an interment is to be cancelled, in the instance where the Municipality is responsible for the digging of a grave, notice of the change must be given to the caretaker at least six hours before the time fixed for the interment or cremation and no refund will be 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 where it is practicable to obtain such signature and failing that for any reason the caretaker may grant an application signed by any other interested person.
- (6) A person who disposes of a corpse in contravention of subsection (1) or who contravenes subsection (5) commits an offence.

11. Interment times

- (1) An interment may take place between 08:00 and 17:00 on any day of the week.
- (2) Despite the provisions of subsection (1) the caretaker may permit interment contemplated outside the times contemplated in subsection (1), in which case the Municipality may levy an additional fee.
- (3) A person who interms a corpse in contravention of the provisions of subsection (1) commits an offence.

12. Register

The caretaker shall maintain a record of all interments and the record shall contain:

- (a) The particulars of the person who requested the interment;
- (b) the particulars of the deceased person 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.

13. Indigent and destitute persons

- (1) Any person may apply to the Municipality for the burial of the corpse of an indigent person and must provide proof that the deceased was granted the status of an indigent person by the Municipality, whereupon the Municipality shall consider burying the corpse.
- (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 a destitute person or an unclaimed corpse may be buried according to conditions determined by the Municipality.

14. 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 if the consent of the caretaker has been obtained and the prescribed fee has 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 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.

CHAPTER 4 : INTERMENT

15. Dimensions of graves and apertures

- (1) The standard dimensions of a grave are as follows:
- (a) Adult:
 - (i) Single grave: Length: 2200 mm; Width: 900 mm.
 - (ii) Double grave: Length: 2200 mm; Width: 2700 mm.
 - (b) Child:
 - Single grave: Length: 1500 mm; Width: 700 mm.
- (2) Any person requiring a larger grave than the dimensions set in subsection (1) shall, when submitting an application in terms of section 10, specify the measurements of the coffin and pay the fee prescribed by the Municipality for enlarging the hole.
- (3) A person, other than an employee of the Municipality who digs a grave in contravention of the dimensions stipulated in subsection (1) commits an offence.

16. Depth of grave

- (1) An adult's grave shall be 1900 mm in depth and that of a child 1500 mm in depth.
- (2) A person, other than an employee of the Municipality, who digs a grave in contravention of the dimensions stipulated in subsection (1) commits an offence.

17. Reservation of grave

- (1) A person desiring to reserve the use of a grave shall submit an application to the caretaker and pay the prescribed fee.
- (2) A restriction may be placed on the reservation of graves, and reservations shall be accepted only for adult graves in the monumental section as stated in subsection (3).
- (3) In the event of an interment of a spouse in the monumental section, only one additional adjoining grave may be reserved for the eventual interment of the other spouse.
- (4) An additional adjoining grave may not be reserved for the survivor of an interred spouse in the aesthetic section, provided instead that a spouse may, upon his or her demise and subject to the provisions of section 14(2), be interred in the same grave as his or her predeceased spouse.
- (5) Where another person, other than the applicant, has mistakenly used a grave, the caretaker shall allocate another grave in the cemetery to the applicant.

18. Child's coffin too large

Should a child's coffin be too large for the dimensions of a child's grave, it shall be placed in an adult grave and the prescribed fee for an adult's interment shall be paid.

19. Construction material of coffin

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

20. Number of bodies in one grave

Subject to the provisions of section 14(2), multiple corpses are permitted to be interred in a single grave.

21. Coffin to be covered with earth

The responsible person shall ensure that a coffin, upon being placed in a grave, is covered without delay with at least 300 mm of earth and the failure to do so constitutes an offence for which the person responsible person.

22. 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.

23. Hearse and vehicle at cemetery

- (1) No hearse or other vehicle shall enter a cemetery without the prior permission of the caretaker having been obtained.
- (2) No hearse or other vehicle shall enter a cemetery other than by the routes set aside for that purpose.
- (3) A person who contravenes subsections (1) or (2) commits an offence.

24. Instruction of caretaker

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

25. Music inside cemetery

- (1) Singing and music is allowed in a cemetery with the prior permission of the caretaker.
- (2) A person who contravenes subsection (1) commits an offence.

26. Interment attended by more than fifty people

The Municipality may require that the caretaker be notified when it is possible that more than 50 people will be present at an interment.

27. Number on grave

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

CHAPTER 5 : EXHUMATION OF CORPSE AND RE-OPENING OF GRAVE**28. Disturbance of mortal remains**

- (1) Subject to the provisions of an exhumation order given in terms of section 3(4) of the Inquests' Act, 1959, and the provisions of any other Act relating to the exhumation of corpses —

- (a) no corpse or mortal remains or ground surrounding it in a cemetery shall be disturbed;
 - (b) no grave shall be re-opened; and
 - (c) no corpse shall be removed from a grave without the written consent of the Municipality.
- (2) The prescribed fee for exhumation shall be paid to the municipality 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.

29. Time of exhumation

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

30. Re-opening of grave

- (1) No person shall re-open 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; or
 - (b) the grave was not initially made deeper for this purpose and 10 years have passed since the interment of the first corpse;
 - (c) the depth does not exceed 300 mm for purposes of burial of a receptacle containing ashes;
 - (d) the consent contemplated in section 29(1) has been obtained; and
 - (e) the fee prescribed by the Municipality has been paid.
- (2) A person who contravenes a provision of subsection (1)(a) to (d) commits an offence.
- (3) The Municipality 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.

CHAPTER 6 : CARE OF GRAVES

31. Shrubs and flowers

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

32. Care of graves

- (1) The maintenance of a grave is the responsibility of the person contemplated in section 9(2).
- (2) The Municipality may, on application by a person contemplated in subsection 9(2) and upon payment of the fee and subject to conditions prescribed by the Municipality, maintain any grave.
- (3) The Municipality may at its discretion undertake to keep, at its own expense, any grave in order for any period.

CHAPTER 7 : CREMATED ASHES

33. Receptacles and ashes

- (1) Unless the ashes are to be buried by the Municipality, the person contemplated in section 10(2) must provide a receptacle, on which the full name of the deceased person is indicated.

- (2) Where a receptacle of ashes 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.

34. Burial and exhumation of ashes

- (1) In the absence of an arrangement between the caretaker and the person contemplated in section 34, the caretaker shall bury or scatter the ashes in a Garden of Remembrance where such facility is available.
- (2) A person shall deposit ashes in a —
 - (a) grave; or
 - (b) niche in a
 - (i) columbarium;
 - (ii) wall of remembrance; or
 - (iii) memorial work.
- (3) A person shall obtain the consent of the caretaker to
 - (a) bury ashes in a grave
 - (b) exhume ashes from a grave; or
 - (c) scatter ashes,and the caretaker shall on receipt of payment of the prescribed fee —
 - (i) immediately consent to the applicant in writing 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 length, 610 mm in width, and 610 mm in depth.

35. Consent of Municipality

- (1) No person shall, erect, alter, paint, clean, renovate, decorate, remove or otherwise interfere with any memorial work or cut any inscription thereon in a cemetery without the written consent of the Municipality.
- (2) When erecting a memorial work, the Municipality may require the submission of the following:
 - (a) A plan which gives an indication of the measurements and the position;
 - (b) specification of the material of which the memorial work is to be constructed; and
 - (c) the wording on the epitaph.
- (3) The plan shall be submitted 30 days before the erection commences, accompanied by the prescribed fee and the Municipality may impose conditions.
- (4) No person may introduce any material for the construction of memorial work into a cemetery unless the provisions of subsection (1) to (3) have been complied with and unless all charges due in respect such grave have been paid.
- (5) The Municipality's consent for the proposed work is valid for six months only and in the event of the memorial work not being erected within the prescribed time, a new application shall be submitted.
- (6) The grave number shall be indicated in clearly legible figures of 30 mm in size.
- (7) A person who contravenes a provision of subsection (1) or (4) commits an offence.

36. Requirements for erection of memorial work

- (1) A person erecting a memorial work shall:
 - (a) possess a plan approved by the Municipality;
 - (b) comply with conditions imposed in terms of section 36(3); and
 - (c) ensure no damage is caused to any structure.
- (2) Where a memorial has a pedestal on ground level or on the berm, the pedestal shall not exceed 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.
- (3) The name of the maker can be displayed on a memorial work, provided the next of kin has consented, no address or any other particulars of the maker are reflected and the space utilized for the maker's name is no larger than 40 x 100 mm; and
- (4) Tiles in the Garden of Remembrance must be 240 mm x 300 mm wide and manufactured from of non-corrosive metal.
- (5) A person who does not comply with a provision in subsection (1) commits an offence.

37. Position, movement and removal of memorial work

- (1) No person may erect a memorial work on a grave before the position has been indicated by the Municipality.
- (2) Should the provisions of sub-section (1) not be complied with, the Municipality reserves the right to alter the position of the memorial work and to recover the costs from the person who erected the memorial work.
- (3) Any alteration of the position of a memorial work that was originally located with the express consent of the Municipality or its employee, shall, in terms of the provisions of this section, be executed at the expense of the Municipality.
- (4) Memorial work erected contrary to the provisions of this by-law may be removed, by the Municipality at the cost of the person who erected the memorial work after due notice and without compensation.

38. Repairs to memorial work

If the person who erected a memorial work allows it to fall into such a state of disrepair that it may cause danger or become a detraction, the Municipality may serve a Notice of Compliance as contemplated in section 61 on such person.

39. Supervision of work

A person engaged in work in a cemetery does so under the supervision of the caretaker and failure to follow the caretaker's instructions constitutes an offence.

40. Damaging of memorial work

The Municipality shall not be liable for any damage to a memorial work unless such damage is due to the negligence of municipal employees in the course and scope of their duties.

41. Conveying of memorial work

- (1) No person shall convey any building material or memorial work in a cemetery upon a vehicle that may cause damage to the pathways, grounds or structures of the cemetery.
- (2) A person who contravenes subsection (1) commits an offence.

42. Vehicle and tools

Every person engaged in work upon a grave or plot shall ensure that the vehicles, tools or appliances do not block any road and failure to do so constitutes an offence.

43. Complying with Municipality's directions

A person carrying on work within a cemetery shall comply with the directions of the Municipality in all respects and failure to do so constitutes an offence.

44. Times for bringing in material and doing work

- (1) No person shall perform any work in or introduce any material to a cemetery other than for the dismantling of memorial work for burial purposes unless during the hours of 07:00 and 18:00 on Mondays to Fridays.
- (2) No person may engage in work that may disturb or disrupt a while a funeral in progress; and
- (3) A person who contravenes subsections (1) or (2) commits an offence.

45. Inclement weather

- (1) No person may repair or replace any memorial work while the soil is in an unsuitable condition as a consequence of inclement weather.
- (2) A person who contravenes subsection (1) commits an offence.

46. Production of written permission

A person engaged in work or travelling to or from work within the cemetery shall, upon demand from an authorised municipal official, produce the written consent issued in terms of section 36 and failure to do so constitutes an offence.

47. Memorial work

- (1) 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) if erected on a grave, may not exceed 1,2 m in height, 610 mm in length, and 610 mm in width.
- (2) A person who erects a memorial work in contravention of subsection (1) or who contravenes a provision of subsection (2) commits an offence.

CHAPTER 9 : SECTIONS IN CEMETERY**48. Municipality may establish sections**

- (1) The Municipality 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; and/or
 - (e) Panoramic Section

49. Monumental section

- (1) Memorial work may be erected upon the whole surface of the grave subject thereto that the provisions of section 37 must be complied with and that the following measurements shall not be exceeded:
 - (a) Height: 2000 mm.
 - (b) Width: 900 mm in case of a single grave and 700 mm in case of a double graves;
 - (c) Thickness: 250 mm.
- (2) A person commits an offence if he or she exceeds the measurements stipulated in subsection (1).

50. Garden of Remembrance

- (1) This section contains the wall of remembrance with niches and a garden area in which plaques can be erected.
- (2) A container intended to be placed in a niche shall not exceed 300 mm x 150 mm x 150 mm in size.
- (3) Flowers and wreaths shall be placed only on the holders provided.
- (4) A person who contravenes a provision of subsection (2) or (3) commits an offence.

51. 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 shall erect such a structure without the written approval of the Municipality.
- (3) The size of the structure shall be 500 mm x 350 mm and must be manufactured from a non-ferrous metal or from masonry.
- (4) A person who inter a corpse in contravention of subsection (1), contravenes subsection (2), or who fails to comply with the requirements of subsection (3), commits an offence.

52. Aesthetic Section

- (1) Only a headstone may be erected on a grave and neither a slab, nor a kerb, may 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: 1201 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.

53. Panoramic section

- (1) Only a plaque may be embedded and it must be —
 - (a) made of marble, granite, stainless steel or other nonferrous metal materials;
 - (b) 500 mm in length, 500 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.

CHAPTER 10 : PRIVATE CEMETERIES

54. By-laws apply

The provisions of this by-law apply mutatis mutandis to private cemeteries.

55. Establishment and continued use of cemeteries

- (1) No person may, without the prior consent of the Municipality establish a private cemetery and no proprietor of a private cemetery already in existence may, if the use of the cemetery was not previously authorised by the Municipality, continue to use the existing cemetery for burial purposes.
- (2) A person who wishes to apply for the Municipality's consent to establish a cemetery or use a cemetery as contemplated in subsection (1), must submit a written application to the Municipal Manager together with —
 - (a) a locality plan to a scale of not less than 1 : 10000 which shows
 - (i) the position of the proposed cemetery or existing cemetery in relation to the boundaries of the land on which it is proposed that it be established or upon which it is situated;
 - (ii) the registered description of the site; and
 - (iii) all streets, public places and privately-owned property within a distance of 100 metres of the site;
 - (b) a "block" plan to a scale of not less than 1 : 500 showing the position of external boundaries, internal roads and paths, subdivisions, grave sites, drainage and any buildings existing or proposed to be erected;
 - (c) a plan and sections to a scale of not less than 1 : 100 of any building erected or proposed to be erected which must in this case conform with the National Building Regulations and the Water Services and Sanitation by-laws of the Municipality;
 - (d) a list of registers or records kept or proposed to be kept with reference to —
 - (i) identification of graves;
 - (ii) sale or 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 holds or will hold the land on which the cemetery is to be established or is being used as a cemetery and whether such land is subject to any mortgage or trust; and
 - (g) a schedule of the proposed burial fees or the fees actually being charged.
- (3) On receipt of an application, the Municipal Manager shall cause to be published a notice in one or more newspapers circulating in the municipal area, stating the nature of the application and specifying a date, being not less than 30 days after the date of publication of the notice, by which objections to the granting of an application may be lodged with the Municipality.
- (4) The Municipality may in writing grant consent for the establishment of the private cemetery or the continued use of the private cemetery, upon receipt of the payment by the applicant of the prescribed fee and if satisfied after consideration of the application and any objections that may have been lodged, that no interference with any public amenity or nuisance, or danger to the public health, is likely to take place or arise.

- (5) No departure from the plans as approved are permitted without the written prior approval of the Municipality.
- (6) A person who contravenes a provision of subsection (1) or (5) commits an offence.

56. Duties of Proprietors

- (1) The proprietor of an approved private cemetery shall —
 - (a) comply with any conditions imposed by the Municipality;
 - (b) keep a record that 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, gender, last known address, date and cause of death of the deceased;
 - (c) maintain the grounds, fences, gates, roads, pathways and drains in good condition and clear of weeds and overgrowth;
 - (d) provide for the identification of grave sites by subdividing the cemetery into blocks and -
 - (i) each block must be demarcated by means of signs showing the number and situation of each block;
 - (ii) the graves or grave sites in each block must be separately numbered by means of durable number plates; and
 - (iii) 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 of each month of all burials, that sets out the —
 - (i) name, last known address, age, sex, 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 the identity of the caretaker or of a person newly appointed;
- (2) A person who contravenes a provision of subsection (1) commits an offence.

CHAPTER 11 : MISCELLANEOUS

57. Authentication and service of process

- (1) An order, notice or other document requiring authentication by the Municipality is considered authenticated when signed by an official authorized to do so.
- (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 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 acknowledgment of the posting thereof from the postal service is obtained;

- (d) if that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided for in paragraphs (a), (b) or
 - (e) if that person address and agent, or representative 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 municipality when it is delivered to the Municipal Manager, or a person in attendance at the Municipal Manager's Office.

58. Complaint

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

59. Notice of compliance and representations

- (1) A notice of compliance served in terms of section 40 must state -
- (a) the name and residential and postal address of the person, if either or both of these are known;
 - (b) the nature of the state of disrepair;
 - (c) the measures required to remedy the memorial work, described in sufficient detail to enable compliance with the notice;
 - (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) above, be made to Municipality at a specified place.
- (2) The Municipality, 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 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 paragraph (1)(f), make representations in the form of a sworn statement, or affirmation to Municipality at the place specified in the notice.
- (4) Representations not lodged within the period might not be considered, unless good cause is shown and the Municipality condones the late lodging of the representations.
- (5) The Municipality may, of its own accord, conduct any further investigations to verify the facts if necessary and the results of the investigation shall be made available to the person who must be given an opportunity to respond and the Municipality must also consider the further response.

- (6) The Municipality must, after consideration of the representations and any responses received, make an order in writing and serve a copy of it on the person.
- (7) The order must-
 - (a) set out the findings of Municipality;
 - (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 Municipality.
- (8) If the notice of compliance is confirmed, in whole or in part, or is altered but not set aside, the Municipality shall inform the person to -
 - (a) discharge the obligations set out in the notice; or
 - (b) elect to be tried in court.
- (9) The person who elects to be tried in court must, within seven calendar days, notify the Municipality in writing of their intention to be so tried. -
- (10) The person who does not elect to be tried in court must, within the prescribed manner and time, discharge all obligations under the order.
- (11) Where there has been no compliance with the requirements of a notice, the Municipality may take any steps necessary to repair the monumental work and recover the costs in accordance with section 62.

60. Costs

Should a person fail to take the required measures, the Municipality may recover from the person all costs incurred as a result of it acting in terms of paragraph 61(11).

61. Appeal

A person whose rights are affected by a decision of the Municipality may appeal against that decision by giving written notice of the appeal and the reasons in terms of section 62 of the Local Government : Municipal Systems Act, Act 32 of 2000, to the Municipal Manager within 21 days of the date of the notification of the decision.

62. Charges

Should a person fail to pay the prescribed fee, the Municipality may act in accordance with the provisions of its Customer Care and Revenue Management by-law.

63. Penalties

A person who has committed an offence in terms of this by-law 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.

64. Limitation of liability

The Municipality is not liable for any damage caused by the exercise or failure to exercise any power or the performance of any duty in good faith under this by-law.

65. Exemptions

- (1) Any person may, by means of a written application in which the reasons are given in full, apply to the Municipality for exemption from any provision of this by-law.
- (2) The municipality may grant or refuse an application for exemption or impose conditions and it may alter or cancel any exemption or condition in an exemption.

- (3) An exemption does not take effect before the applicant has undertaken in writing to comply with all conditions imposed under subsection (2), except if an activity is commenced before such undertaking has been submitted to the Municipality, in which case the exemption lapses.
- (4) If any condition of an exemption is not complied with, the exemption lapses immediately.

66. Community Liaison Forums

- (1) The Municipality may establish one or more liaison forums in a community for the purposes of —
 - (a) creating conditions for a local community to participate in the affairs of the municipality;
 - (b) encouraging a local community to participate in the affairs of the municipality; and
 - (c) promoting the burial of the dead in a dignified manner.
- (2) A liaison forum may consist of—
 - (a) a member or members of an interest group, or an affected person;
 - (b) a member or members of a community in whose immediate area a cemetery exists;
 - (c) a designated official or officials of the Municipality; and
 - (d) the councillor responsible for cemeteries.
- (3)
 - (a) The Municipality may, when considering an application for consent, permit or exemption certificate in terms of these by-laws, where applicable, request the input of a liaison forum.
 - (b) A liaison forum or any person or persons contemplated in subsection (2) may, on own -initiative, submit an input to the Municipality for consideration.

67. Revocation of by-laws

The following by-laws are hereby repealed:

- (a) Any by-law previously promulgated by the Municipality or any of the disestablished municipalities now incorporated into the Municipality, in so far as it relates to any matter provided for in this by-law; and
- (b) Any by-law previously promulgated by the Chris Hani District Municipality or any of its predecessors, in so far as it has been made applicable to the Municipality by the authorisation for the execution of powers and functions in terms of section 84(3) of the Municipal Structures Act, 117 of 1998.

68. Short title and commencement

This by-law may be cited as the Funeral Parlours and Cemeteries By-law and commences on the date of publication thereof in the Provincial Gazette.
