



KWAZULU-NATAL PROVINCE  
KWAZULU-NATAL PROVINSIE  
ISIFUNDAZWE SAKWAZULU-NATALI

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**Vol. 8**

**PIETERMARITZBURG,**

28 MARCH 2014  
28 MAART 2014  
28 kuNDASA 2014

**No. 1121**

**We all have the power to prevent AIDS**



**AIDS  
HELPLINE**

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DEPARTMENT OF HEALTH

**Prevention is the cure**

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**MUNICIPAL NOTICE**

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**No. 22****28 March 2014****DEPARTMENT OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS****NOTICE IN TERMS OF SECTION 14(2)(b)(i) OF THE LOCAL GOVERNMENT:  
MUNICIPAL SYSTEMS ACT, 2000: PUBLICATION OF STANDARD DRAFT BY-LAWS**

1. The Member of the KwaZulu-Natal Executive Council responsible for local government, under the powers vested in her by section 14(2) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), proposes to publish the following notice:

*"I, in my capacity as Member of the KwaZulu-Natal Executive Council responsible for local government, and under powers vested in me by section 14(2) of the Local Government: Municipal Systems Act, 2000 (Act No.32 of 2000), after having consulted the Minister of Cooperative Governance and Traditional Affairs, Organised Local Government in the Province and Municipalities in the Province, hereby make the standard draft By-laws contained in the Schedule hereto."*

2. Municipalities, the public and interested parties are invited to submit comments in writing on the standard draft by-laws, by no later than thirty days after the publication hereof, by –

(a) post to the Head of Department, Co-operative Governance and Traditional Affairs, Pietermaritzburg, Private Bag X 9123, 3200, for the attention of Ms. Sinegugu Makhaye;

(b) hand delivered to the 7<sup>th</sup> Floor, Southern Life Plaza, 271 Church Street, Pietermaritzburg, 3201, for the attention of Ms. Sinegugu Makhaye;

(c) facsimile to 033 - 355 6559; or

(d) email to [sinegugu.makhaye@kzncogta.gov.za](mailto:sinegugu.makhaye@kzncogta.gov.za)

## SCHEDULE

1. Rules and orders
2. Pounds
3. Credit Control
4. Street Trading
5. Cemeteries, Crematoria and Undertakers

### RULES AND ORDERS OF MUNICIPAL COUNCILS AND COMMITTEES OF THE COUNCIL BY- LAW

Be it enacted by the Council of the \_\_\_\_\_ Municipality, in terms of section 156(2) of the Constitution of the Republic of South Africa, 1996, read with section 11(3)(m) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), as follows:

### ARRANGEMENT OF SECTIONS

#### *Section*

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2. Application of this by-law
3. Interpretation of this by-law
4. Council meetings
5. Admission of public
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7. Special meetings
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50. Adoption as by-law
51. Repeal of existing by-laws
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## CHAPTER 1

### DEFINITIONS

#### Definitions

1. In this by-law, unless inconsistent with the context –

“**by-law**” means legislation passed by the council of a municipality;

“**chairperson**” means a councillor elected in a permanent or acting capacity to control and conduct any meeting of a committee of council;

“**Council**” means —

- (a) the \_\_\_\_\_ Municipality, exercising its legislative and executive authority through its municipal council;
- (b) its successor-in-title;
- (c) a structure or person exercising a delegated power or carrying out an instruction, where any power in this By-law has been delegated or sub-delegated, or an instruction given, as contemplated in section 59 of the Systems Act; and
- (d) a service provider fulfilling a responsibility under this by-law;

“**Code of Conduct**” means the Code of Conduct for Councillors contained in Schedule 1 to the Systems Act;

“**contact details**” means a physical address, postal address, electronic mail address, telephone number, facsimile number and cellular phone number;

“**calendar day**” means a twenty-four hour day as denoted on the calendar;

“**councillor**” means a member of a municipal council;

“**day**” means any ordinary day other than a Saturday, Sunday or Public Holiday, except where otherwise stated;

“**deputation**” means a person or group of persons who wish to appear personally before the council or a committee of the council in order to address the council or committee of the council;

“**executive committee**” means the council’s executive committee established in terms of section 43 of the Structures Act;

**“in-committee”** means any council or committee meeting at which the public and or officials of the municipality are excluded;

**“integrated development plan”** means a single, inclusive and strategic plan for the development of the municipality and applicable in terms of Chapter 5 of the Systems Act;

**“mayor”** means a councillor elected as the mayor of the municipality in terms of section 48 of the Structures Act;

**“meeting”** means a meeting of the council or any one of its committees;

**“municipality”** means the \_\_\_\_\_ municipality established in terms of section 155(6) of the Constitution, 1996, and established by and under sections 11 and 12 of the Structures Act, read with sections 3, 4 and 5 of the KwaZulu-Natal Determination of Types of Municipality Act, 2000 (Act No. 7 of 2000);

**“municipal asset”** means any movable, immovable, corporeal, incorporeal, tangible and intangible property to which the municipality holds title;

**“municipal manager”** means the person appointed municipal manager in terms of section 54A of the Systems Act and includes any person acting in that capacity;

**“notice of motion”** means the instrument by which councillors may bring items on to the agenda of a council meeting in terms of section 23 of this By-law;

**“Peace Officer”** means any person declared as a Peace Officer in terms of the Criminal Procedure Act No. 51 of 1977;

**“point of order”** means the pointing out of any deviation from or anything contrary to, the conduct and or any other irregularity in the proceedings of a meeting;

**“precincts”** means the council chamber and all places of meeting, the areas to which the public are allowed access and all other venues where the meetings of the council or a committee of the council are conducted;

“**public**” includes the media and means any person residing within the Republic of South Africa;

“**service delivery agreement**” means an agreement between a municipality and an institution or person mentioned in section 76(b) of the Systems Act in terms of which a municipal service is provided by that institution or person, either for its own account or on behalf of the municipality;

“**speaker**” means the chairperson of the council elected in terms of section 36 of the Structures Act and includes any acting speaker when he or she is elected to perform the functions of the speaker;

“**Structures Act**” means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

“**Systems Act**” means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); and

“**table**” means to submit a report or any official document to the council or a committee of council for consideration at a meeting of the council or a committee of council of which notice has been given in terms of this By-law.

## CHAPTER 2

### APPLICATION AND INTERPRETATION OF RULES AND ORDERS

#### Application of this by-law

2. This By-law governs the proceedings of the council and committees of the council which bind and must be complied with by –

- (a) all councillors;
- (b) any member of the public while present in the precincts;
- (c) any deputation addressing the council or a committee of the council; and
- (d) any municipal official of the municipality.



**Interpretation of this by-law**

3.(a) Any interpretation of this By-law must be made having due regard to the supremacy of the Constitution, national, provincial and municipal legislation, the rule of law and the rules of natural justice.

(b) The ruling of the speaker or chairperson with regard to the interpretation of this By-law at a meeting of the council or committee of the council will, subject to sections 3(e) and 3(f), be final and binding.

(c) The interpretation and the ruling of the speaker or chairperson on any of this By-law must be recorded in the minutes of the council or committee meeting.

(d) The municipal manager must keep a register of the rulings and legal opinions.

(e) Any councillor may request the municipal manager, in writing within five days from a ruling made in terms of section 3(b), to obtain clarity on the interpretation and ruling and to report to the council or committee of the council.

(f) The council or committee of the council may after consideration of the report in terms of section 3(e) confirm, amend or substitute the ruling of the speaker or chairperson, subject to any rights which any third party may have accrued as a result of the ruling and all decisions effecting the rights of others must be in writing and reasons must be recorded of such decisions.

**CHAPTER 3****FREQUENCY, ADMISSION OF PUBLIC AND NOTICE OF MEETINGS****Council meetings**

4.(a) The council must hold an ordinary meeting of the council not less than once in every three months.

(b) The speaker must convene all meetings of the council in accordance with section 4(a) and subject to section 6.

**Admission of public**

5.(1) All meetings of the council and those of its committees must be open to the public, and the council or committee of the council may not exclude the public from a meeting, other than when the council or committee, due to the nature of the business being transacted or when the disclosure of any matter may be prejudicial to the interests of the municipality, deems it reasonable and justifiable to do so having due regard to the principles of an open and democratic society.

(2) The council or a committee of the council, may not for any reason whatsoever, exclude the public when considering, voting or noting any of the following matters –

- (a) a draft by-law tabled in the council;
- (b) a budget tabled in the council;
- (c) the municipality's integrated development plan, or any amendment of the plan, or any amendment of the plan tabled in council;
- (d) the municipality's performance management system, or any amendment of the system, tabled in council;
- (e) the decision to enter into a service delivery agreement;
- (f) any reports on an award in terms of supply chain management policy;
- (g) the disposal or acquisition of municipal capital asset;
- (h) any other matter prescribed by legislation.

(3) The municipal manager must give notice to the public, in a manner determined by the council, of the time, date and venue of every ordinary meeting of the council or committee of the council and any special or urgent meeting of the council or committee of the council, except when time constraints make this impossible.

#### **Notice to attend an ordinary council meeting**

6.(1) The speaker must convene meetings of the council, at least once every three months, through a duly signed "Notice of Council Meeting", stating the date, place and time of the meeting and accompanied by or containing the agenda of the proposed meeting.

(2) Notice to attend a meeting in terms of section 6(1) must be given at least –

- (a) five calendar days prior to an ordinary meeting; and
- (b) two calendar days prior to a special meeting.

#### **Special meetings**

7.(1) The speaker must call a special meeting of the council –

- (a) for the purpose of pertinent or urgent council business; or
- (b) or at the request of a majority of the councillors of the municipality.

(2) A special meeting must be held in compliance with section 6(2)(b) and in terms of section 7(1)(b) no later than four days from the date of receipt of a request.

- (3) A request for the calling of a special meeting, as contemplated in section 7(1)(b), must –
- (a) be signed by no less than fifty percent plus one of all councillors of the municipality; and
  - (b) be accompanied by –
    - (i) a duly signed notice of motion; and
    - (ii) a written statement by the councillor signing the notice of motion giving reasons as to why the intended business of the special meeting is urgent and cannot wait for an ordinary meeting of the council.
  - (c) If the speaker fails to convene a meeting in terms of this section, the municipal manager must convene such meeting and conduct an election of an acting speaker in terms of section 41 of the Structures Act.

#### **Service of notices and agenda**

- 8.(1) Notice to attend a meeting or any other official communication from the council, must be delivered to –
- (a) a physical address within the area of jurisdiction of the municipality; or
  - (b) an e-mail address;
  - (c) facsimile; or
  - (d) by a short message service:

Provided that contact details must be supplied by each councillor to the municipal manager in writing within two days of a councillor's election and, thereafter, whenever the councillor wishes to change either address and at which address the councillor will accept service and or receipt of any notice to attend a meeting and any other official communication from the council.

(2) All documentation relevant to any council or committee meeting, except special meetings convened in terms of section 7, must be given to all councillors at least five calendar days prior to an ordinary council or committee meeting and two calendar days prior to a special council or special committee meeting.

(3) All councillors must inform the speaker of any change of his contact details within three days of such change.

(4) Subject to section 5(3), notice to attend a meeting must be displayed on the public notice boards of the municipality.

**Non-receipt of notice**

9.(a) A councillor may request an investigation regarding the non-receipt of a notice to attend a meeting.

(b) Non-receipt of a notice to attend a meeting will not affect the validity of any meeting or proceedings of council or any of its committees.

**CHAPTER 4  
QUORUM****Quorum**

10.(1)(a) Notwithstanding that there may be vacancies, the quorum of a council must be fifty percent plus one of the total number of councillors determined in accordance with the municipality's establishment notice, before a vote may be taken on any matter.

(b) Subject to a quorum, the failure of any councillor to vote will not invalidate the proceedings of the council meeting.

(2)(a) Notwithstanding that there may be vacancies, a majority of the number of councillors appointed to a committee of council must be present at a meeting of the committee before a vote may be taken on any matter.

b) Subject to a quorum, the failure of any councillor to vote will not invalidate the proceedings of the committee meeting.

**Cancellation and adjournment in absence of quorum**

11.(1) No meeting may take place, if no quorum is present fifteen minutes after the time at which a meeting was due to commence, unless it is unanimously agreed by the councillors present to allow further time not exceeding fifteen minutes for a quorum, whereafter if no quorum is present, the meeting must be cancelled.

(2) If during discussion on an item at any meeting of council or any of its committees the attention of the speaker or chairperson is called to the number of councillors present, he or she must –

(a) count the councillors present;

(b) if it is found that there is no quorum, the speaker or chairperson must adjourn the meeting and allow an interval of fifteen minutes for a quorum to become present;

(c) if a quorum becomes present after the adjournment then the meeting must continue;

(d) if no quorum becomes present after the adjournment then the chairperson or speaker must forthwith adjourn the meeting.

(3) When a meeting is adjourned as a result of no quorum, the meeting will be re-convened within seven days as a continuation meeting.

## **CHAPTER 5 ATTENDANCE**

### **Attendance**

**12.(1)** All councillors must punctually attend and remain in attendance at each meeting of the council and a committee of which that councillor is a member except when –

- (a) leave of absence is granted in terms of section 13;
- (b) that councillor is required to withdraw in terms of section 46(b); or
- (c) that councillor is absent with the permission of the speaker or chairperson.

(2) Each councillor attending any meeting of the council or a committee of the council must sign an attendance register provided for that purpose.

(3) The attendance register must be filed in the office of the municipal manager.

(4) Any councillor who is entitled to leave of absence in terms of section 13 and no longer requires such leave, is entitled to attend, participate and vote in the meeting from which leave of absence was granted and sign the attendance register.

### **Leave of absence**

**13.(1)** Leave of absence must not be granted in such a manner that more than the number required for a quorum will at any one time be absent.

(2) If a councillor –

- (a) is unable to attend a meeting of which notice had been given; or
- (b) is unable to remain in attendance at a meeting; or
- (c) will arrive after the stipulated commencement time of a meeting,

he or she will, as soon as is reasonably possible and prior to that meeting, lodge with the municipal manager a written application for leave of absence from the whole or any part of

the meeting concerned, which application must provide reasonable and bona fide reasons for the application and show good cause for the granting of the application.

(3) The municipal manager must as soon as possible inform the speaker or chairperson of the meeting concerned of any application for leave of absence received.

(4) The speaker or chairperson of the meeting concerned must as soon as possible consider an application for leave of absence and either grant or reject the application with reasons and immediately inform the municipal manager of his decision.

(5) The municipal manager must as soon as is reasonably possible, inform a councillor who has applied for leave of absence of the speaker or chairperson's decision.

(6) A councillor will be deemed absent without leave from the meeting concerned where an application for leave of absence has not been granted and he or she –

- (a) failed to attend a meeting; or
- (b) failed to remain in attendance at a meeting.

(7) Where a councillor fails to remain in attendance at a meeting –

- (a) without being granted permission to do so; or
- (b) without obtaining permission from the speaker or chairperson to leave prior to the close of the meeting,

the time of leaving must be recorded in the minutes of the meeting and that councillor will be deemed to have been absent without leave at that meeting.

(8) Where a councillor arrives late at a meeting, without obtaining permission to do so, the time of arrival and the reasons for the late attendance must be recorded in the minutes of the meeting and the councillor may attend the meeting and sign the attendance register in terms of section 12(2).

(9) Leave of absence for two or more consecutive council or committee meetings must be sanctioned by the council or the relevant committee.

### **Non-attendance**

14.(1)(a) Subject to compliance with the procedure set out in section 13 and the provisions of item 4(2) of Schedule 1 of the Systems Act, a councillor who is absent without good cause

from a meeting, of which notice has been given, will be liable to pay a fine equivalent to one week's remuneration, which fine may be deducted from remuneration due to the councillor concerned.

(b) A councillor who is absent from three or more consecutive meetings of a municipal council, or from three or more consecutive meetings of a committee, which that councillor is required to attend in terms of item 3 of Schedule 1 of the Systems Act, must be removed from office as a councillor in accordance with section 14(2)(e) of the Systems Act.

(c) Proceedings for the imposition of a fine or the removal of a councillor must be conducted in accordance with a uniform standing procedure which each municipal council must adopt.

(2) Where a councillor has been absent without obtaining leave from a meeting—

(a) the Rules Committee as contemplated in section 43 or the speaker or chairperson as the case may be, must invite the councillor to provide a formal explanation setting out the reasons for the councillor's absenteeism from the meeting;

(b) the speaker or chairperson must consider the explanation and decide whether or not the councillor was absent with good cause, providing appropriate reasons for the decision;

(c) the councillor may appeal in writing to the speaker's or chairperson's decision within seven days of receipt of such decision.

(d) the council or committee, as the case may be, must –

(i) allow the councillor an opportunity to make representations, oral or written; and

(ii) consider the councillor's appeal, together with any comments from the speaker or chairperson of the meeting concerned;

(iii) make a finding as to whether the councillor was absent with or without good cause.

(3) The municipal manager must keep a record of all incidents in respect of which councillors have been found to be absent or deemed to be absent without leave and without good cause and must submit a written report to the speaker whenever a councillor is absent from three or more consecutive meetings which that councillor was required to attend.

(4) Where the speaker receives a report in terms of section 14(3), the speaker must submit the report to council and direct that the matter be investigated in accordance with Item 14 of the Code of Conduct.

## **CHAPTER 6 ADJOURNMENT**

### **Adjourned meetings**

15. Subject to section 11(3), a council or committee meeting may, by majority vote, be adjourned to another day or hour but no later than 14 days after the original meeting.

### **Continuation meeting**

16.(a) When a meeting is adjourned, notice of the continuation meeting must be served in terms of section 8.

(b) No business will be transacted at a continuation meeting except such as is specified in the notice of the meeting, which was adjourned.

## **CHAPTER 7 PROCEEDINGS**

### **Speaker and chairpersons of meetings**

17.(1) At every meeting of the council, the speaker, or if he or she is absent, an acting speaker, will be the chairperson and will perform the duties stipulated in terms of section 37 of the Structures Act and must ensure that each councillor when taking office is given a copy of this By-law and the Code of Conduct.

(2) The speaker and chairperson of council and committee meetings –

- (a) must maintain order during meetings;
- (b) must ensure compliance in the council with the Code of Conduct for Councillors;
- and
- (c) must ensure that meetings are conducted in accordance with this By-law.

(3) If the speaker or chairperson of the council or committee of the council is absent or not available to perform the functions of speaker or chairperson, or during a vacancy, the council or committee under the direction of the municipal manager or his/her nominee must elect another councillor to act as speaker or chairperson as the case may be.

(4) No meeting of the council or a committee of the council may commence or continue unless a speaker or chairperson presides at a meeting.



**Minutes**

18.(a) The proceedings of every council meeting must be accurately and electronically recorded and retained in accordance with the Archives and Record Service of South Africa Act, 43 of 1996.

(b) Written minutes of the proceedings of each council and committee meeting must contain an accurate record of the resolutions adopted by council at such meeting.

(c) The approved minutes of every meeting of a council or committee other than in-committee meetings must be available to the public.

(d) Where the municipal manager is of the opinion that any resolution or proceeding of a council or committee meeting may be in contravention of any law or by-law, he or she must advise the council or committee accordingly and full details of such opinion must be recorded in the minutes.

**Order of business**

19.(1) The order of business at every meeting of the council or its executive committee or committee of council is as follows:

- (a) notice of meeting;
- (b) applications for leave of absence;
- (c) confirmation of minutes of previous meeting;
- (d) announcements by the chairperson;
- (e) declarations of pecuniary or other interests;
- (f) deputations;
- (g) reports;
- (h) notices of motion;
- (i) questions of which notice has been given; and
- (j) general matters of an urgent nature.

(2) The speaker or chairperson may, in his discretion, at any stage bring forward any business that is on the agenda paper.

**Confirmation of minutes of previous meeting**

20.(1) The minutes of every meeting must be confirmed at the next ordinary meeting of that council or committee and must be signed by the speaker or chairperson.

(2) No motion or discussion will be allowed upon the minutes of a previous meeting, other than relating to the accuracy of those minutes.

### **Deputations**

**21.(a)** A deputation wishing to address the council or a committee of council must submit a memorandum to the municipal manager in which is set out the representations it wishes to make.

(b) A request by a deputation to address the council or a committee of the council must be approved by the speaker or relevant chairperson.

(c) The municipal manager must submit the memorandum to the council or a committee of the council, which may receive the deputation.

(d) Any matter requiring consideration arising from a deputation, will not be further considered by the council or committee until the deputation has withdrawn provided that questions of clarity may be permitted.

(e) A member of the public, other than a deputation, who wishes to speak at a council or committee meeting, must obtain the permission of the speaker or chairperson to do so, prior to the commencement of the meeting.

(f) When speaking at a council or committee meeting, a member of the public and a deputation must comply with any directions or orders given by the speaker or chairperson.

(g) If a member of the public or a deputation conducts himself/herself in a disorderly and unruly manner at any time, the speaker or chairperson must direct that that member remove himself or be removed by a Peace Officer from the precincts.

(h) Any member of the public or deputation who fails or refuses to comply with the speaker's or chairperson's directions in terms of section 21(f) and section 21(g) will be guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding one month or both such fine and such imprisonment.

### **Reports**

**22.(a)** Any report submitted to the council or a committee of the council must, with the exception of a report accepted by the speaker or chairperson as a matter of urgency, be provided to councillors in terms of section 8.

(b) The speaker or chairperson must allow debate in accordance with sections 34, 35, 36, 37, 38, 39 and 40 on any report submitted to the council or a committee of the council, at the meeting at which that report is submitted and if the debate is incomplete or does not take place for any reason whatsoever, then the debate in respect of that report must be held, at the next meeting.

**Motions**

23.(1) No subject will be brought before council or a committee of council by a councillor except by way of notice of motion.

(2) A notice of motion must –

- (a) be in writing; and
- (b) be signed by the councillor submitting it and by another councillor acting as seconder; and
- (c) refer to one matter only.

(3) A notice of motion must, subject to section 7, be lodged with the municipal manager before 12h00 seven calendar days prior to the next meeting, failing which the notice will be considered at the next ensuing meeting.

(4) The municipal manager must –

- (a) date and number each notice of motion;
- (b) enter each notice of motion lodged in a register, which must be open to inspection by any councillor and the public; and must
- (c) enter each notice of motion on the agenda in the order received.

(5) The speaker or chairperson must –

- (a) read out the number of every motion and the name of the mover and seconder;
- (b) ascertain which motions are unopposed and these will be passed without debate; and
- (c) call the movers of the opposed motions in the order they appear on the agenda.

(6) A councillor submitting a motion must move such motion and will have the right of reply.

(7) A motion will lapse if the councillor and seconder who submitted it is not present at the meeting when such motion is being debated.

(8) A councillor will be allowed not more than three notices of motion on the same agenda.

(9) The speaker or chairperson must not reject a motion received by him or her in terms of this By-law.

**Questions**

**24.(a)** A councillor may put a question requiring a written reply from any political or municipal office bearer of the municipality concerning any matter related to the effective performance of the municipality's functions and the exercise of its powers, provided that written notice of the question has been lodged with the speaker or chairperson and the municipal manager at least seven days prior to the council or committee meeting and the municipal manager must ensure that the councillor receives a written reply from that political or municipal office bearer, at the council or committee meeting.

(b) If after a question has been replied to, a councillor is of the opinion that the reply is not clear and is ambiguous, he or she may, with the consent of the speaker or chairperson, request a follow-up question.

**Supply of information to a councillor**

**25.(a)** No councillor may approach or communicate with any officer of the municipal administration concerning the business of the municipality other than when exercising his rights or liberties as an ordinary member of the public.

(b) A councillor may approach and communicate with the municipal manager or any head of department or any officer of the municipal administration specifically designated by the municipal manager or by the head of department concerned for this purpose, in order to obtain such information as he or her may reasonably require for the proper performance of his duties as a councillor.

**General matters of an urgent nature**

**26.(a)** General items of an urgent nature may be placed on an agenda by the municipal manager and any member of the council with the prior consent of the speaker or chairperson, which consent will not be unreasonably withheld.

(b) Prior to adoption, councillors must be afforded reasonable time to peruse and consider any report or official documents submitted to the council.

**Interpretation**

**27.** If a majority of councillors present so resolve, an interpreter may be used in meetings of the council and committees of the council.

**In-committee**

- 28.**(a) Subject to section 5, the council or a committee of council may, at any time, resolve to proceed in-committee.
- (b) The public will be excluded from any in-committee meetings.
- (c) The municipal manager or another official exempted from this section by the speaker or chairperson, will not be excluded from any in-committee meeting.
- (d) All proceedings in-committee must be recorded in terms of section 18(1) and 18(2) and must be confidential.
- (e) Unauthorised disclosure of any confidential matter must be dealt with in terms of the Code of Conduct.

**CHAPTER 8  
VOTING****Decisions by voting**

- 29.**(1) A quorum must be present in order for a vote to be taken.
- (2) All questions concerning the following matters must be determined by a decision taken by the council with a supporting vote of a majority of the number of councillors determined in accordance with the municipality's establishment notice –
- (a) the passing of by-laws;
  - (b) the approval of budgets;
  - (c) the imposition of rates and other taxes, levies and duties;
  - (d) the raising of loans;
  - (e) the rescission of a council resolution within 6 months of the taking thereof; and
  - (f) any other matter prescribed by legislation.
- (3) All other questions before the council must be decided by a majority of the votes cast by the councillors present.
- (4) If on any matter there is an equality of votes, the speaker or chairperson may exercise a casting vote in addition to a deliberative vote as a councillor, provided that a speaker or chairperson will not exercise a casting vote during the election of any office bearer of council.

**Method of voting**

**30.(a)** Voting will be by a show of hands unless the law prescribes otherwise, or the council or committee by resolution of a majority of the councillors present resolves to proceed with a secret written ballot.

(b) During the taking of a vote no councillor may leave the council chamber or committee room.

(c) The municipal manager or his nominee, will count the votes cast and will record the result of voting, but the speaker or chairperson will announce the result.

**Dissenting votes**

**31.** A councillor may request that his dissenting vote be recorded as evidence of how he or she voted on the motion.

**CHAPTER 9****REVOCAION OF COUNCIL AND COMMITTEE RESOLUTIONS****Revocation of Council Resolutions**

**32.(a)** Approval to revoke or alter a resolution of council may not be delegated to any person or committee.

(b) Prior notice of an intention to move a motion for the revocation or alteration of a council resolution must be given.

(c) Any revocation or alteration of a council resolution must be made in terms of section 29(2)(e).

**Revocation of Committee Resolutions**

**33.(a)** Approval to revoke or alter a resolution of a committee of the council may not be delegated to any person.

(b) Prior notice of an intention to move a motion for the revocation or alteration of a resolution of a committee of the council must be given.

(c) Any revocation or alteration of a resolution of a committee of the council must be approved by a majority of the number of the members of that committee.

## CHAPTER 10 DEBATE

### **Opportunity to speak**

- 34.(a) A councillor may only speak when so directed by the speaker or chairperson.
- (b) A councillor may indicate a desire to speak by raising his hand and awaiting the direction of the speaker or chairperson, which direction must not be withheld.
- (c) Councillors and officials must stand when speaking and must direct their address to the speaker or chairperson.

### **Relevance**

35. Every speaker must restrict him or herself strictly to the matter under consideration.

### **Length of speeches**

36. Other than the delivery of the mayoral report or the presentation of the estimates of income and expenditure, no speech will exceed five minutes in length without the consent of the speaker or chairperson.

### **Councillors to speak only once**

37. A councillor may not speak more than once on any motion or proposal unless permission to do so is granted by the speaker or chairperson provided that the mover of the motion may speak to the motion, will have the right of reply and the reply will be confined to answering previous speakers and will not introduce any new matter into the debate.

### **Precedence of the speaker or chairperson**

38. Whenever the speaker or chairperson rises during a debate, any councillor then speaking or offering to speak must seat himself and the councillor must be silent, so that the speaker or chairperson may be heard without interruption.

### **Points of order**

- 39.(a) Any councillor may raise a point of order at any time by standing to draw the attention of the speaker or chairperson.

(b) The point of order takes precedence over everything else in the meeting and the speaker or chairperson must grant immediate hearing to the councillor raising the point of order and rule accordingly.

(c) The ruling of the speaker or chairperson on a point of order will be final and will not be open to discussion.

### **Explanation**

40. Any councillor may speak in explanation, provided that such explanation is confined to some material part of the discussion, which may have been misunderstood.

## **CHAPTER 11 CONDUCT**

### **General conduct**

41. Councillors and officials must during any council or committee meeting –

- (a) conduct the business in the highest decorum and integrity that the occasion deserves;
- (b) must, at all times adhere to the principles contained in the code of conduct and this By-law;
- (c) must at all times adhere to the rule of law and the by-laws of the municipality;
- (d) must be dressed appropriately for the dignity of the meeting;
- (e) must not use offensive or objectionable language; and
- (f) must not use a cellular phone during, bring a firearm or any dangerous weapon into, a meeting of council or any of its committees.

### **Misconduct**

42.(a) The speaker may order a councillor to withdraw and apologise for any word, statement, opinion or gesture made by that councillor.

(b) If a councillor or councillors behave improperly during a meeting of council or any of its committees, the speaker must direct the councillor or councillors to conduct himself or themselves properly and, if speaking, to stop speaking and resume his seat or seats.

(c) In the event of persistent disregard of the directions of the speaker, the speaker must direct such councillor or councillors to retire from the meeting and remove himself or themselves from the place of meeting until the item under discussion has been finalised.



(d) In the event that any misconduct by a councillor or councillors prejudices the proceedings of the council or committee the speaker or chairperson must adjourn the meeting and any such misconduct by a councillor or councillors must be dealt with in terms of this By-law and the Code of Conduct.

(e) Any councillor who refuses to leave a meeting of the council or a committee of the council when directed to do so by the speaker or chairperson of a meeting in terms of any section in this By-law, may be forcibly removed and will be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one month or to both such fine and such imprisonment.

## **CHAPTER 12 COMMITTEES**

### **Rules Committee**

43.(a) The municipal council may by resolution of a majority of councillors establish a special committee to be known as the Rules Committee to investigate and make findings on any alleged breaches of the Code of Conduct, including sanctions for non-attendance at meetings and to make recommendations regarding any other matter concerning this By-law.

(b) The Rules Committee will consist of the speaker, the mayor and one representative of each political party represented on the council, such representative to be nominated from time to time by each political party.

### **Own rules**

44.(a) Every committee of the council must determine its own procedures subject to any directions from council and this By-law.

(b) Sections 34, 35, 36, 37, 38, 39 and 40 of this By-law may be relaxed by a chairperson of a committee to accommodate interactive and effective participation, provided that the chairperson may, at his/her discretion, apply the provisions of any section contained in chapter 10.

### **The chairperson**

45.(1) The chairperson of a committee must—

(a) preside at every meeting of the committee at which he or she is present; and

(b) be entitled to vote in the first instance and in the case of an equality of votes in

addition to his deliberative vote, will give a second or casting vote.

(2) In his absence, the acting or deputy chairperson will have the same powers and rights of voting as those possessed by the chairperson.

## **CHAPTER 13 PECUNIARY INTEREST**

### **Declaration of pecuniary interest**

**46.(a)** A councillor must disclose to the municipal council, or to any committee of which that councillor is a member, any direct or indirect personal or private business interest that that councillor, or any spouse, partner or business associate of that councillor may have in any matter before the council or committee.

(b) The councillor making a declaration must withdraw from the proceedings of the council or committee unless the council or committee decides that the councillor's direct or indirect interest in that matter is trivial or irrelevant.

(c) A councillor who, or whose spouse, partner, business associate or close family member, acquired or stands to acquire any direct benefit from a contract concluded with the municipality, must disclose full particulars of the benefit of which the councillor is aware at the first meeting of the council at which it is possible for the councillor to make disclosure.

(d) The disclosure of interests in terms of section 46(a) and benefit in terms of section 46(c) does not apply to an interest or benefit which a councillor, or a spouse, partner, business associate or close family member, has or acquires in common with other residents of the municipality.

(e) When elected or appointed, a councillor must within 60 days or as soon as possible thereafter declare in writing to the municipal manager the financial interests referred to in item 7 of schedule 1 of the Systems Act.

## **CHAPTER 14 BREACH AND SANCTIONS**

### **Breach**

**47.** Any councillor who fails or refuses to obey this By-law, or any resolution of Council, may be guilty of a breach of the Code of Conduct.

**Sanction**

48. Where it is alleged that a councillor has breached this By-law, the council must, in terms of Item 14 of the Code of Conduct, investigate the alleged breach and may impose a sanction.

**CHAPTER 15  
GENERAL PROVISIONS****Suspension of a rule or order**

49. In instances of urgency or where a council considers that adherence to a section would be unreasonable and would prejudice the operation of a meeting of the council, then the council may with the approval of the majority of the number of councillors of the municipality and for the duration of that meeting, temporarily relax the provisions of a section, provided that–

- (a) such relaxation must not be in contravention of any national or provincial legislation or any by-law of the municipality;
- (b) no section may be relaxed when the removal of any political office bearer is before the council.
- (b) the suspension or relaxation of the section relates to an item on the agenda for the meeting of the council or committee of the council; and
- (c) section 22 must not be suspended; and
- (d) the reasons for the suspension of the section are recorded in the minutes of the meeting.

**Adoption as by-law**

50. This By-law must be adopted as a by-law of the municipality.

**Repeal of existing by-laws**

51. The council's existing by-laws in respect of rules and orders are hereby repealed.

**Short title and commencement**

52. This By-law will be called the \_\_\_\_\_ Municipal Standing Rules and Orders, 20\_\_\_\_.

## POUNDS BY- LAW

Be it enacted by the Council of the \_\_\_\_\_ Municipality, in terms of section 156(2) of the Constitution of the Republic of South Africa, 1996, read with section 11(3)(m) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), as follows:

### ARRANGEMENT OF SECTIONS

#### *Section*

1. Definitions
2. Application
3. Establishment of pound
4. Appointment of poundkeeper
5. Trespassing or straying animals may be impounded
6. Animals too vicious, intractable or wild to be impounded
7. Release of animals before removal to pound
8. Care of trespassing animals
9. Pound to which animals must be taken
10. Information to be supplied to poundkeeper
11. Acceptance at pound of animals to be impounded
12. Pound register
13. Notice to owners of animals
14. Care of impounded animals
15. Isolation of infected animals
16. Impounded animals not to be worked
17. Death of or injury to impounded animals
18. Copies of by-laws
19. Fees and costs payable
20. Release of impounded animals
21. Sale of impounded animals
22. Poundkeeper may not purchase impounded animals
23. Animals unsuccessfully offered for sale
24. Proceeds
25. Action for recovery of damages
26. Procedure to be followed in application to Court
27. Indemnity

28. Offences and penalties
29. Schedules 1 and 2 form part of this by-laws
30. Repeal of by-laws
31. Short title

## Definitions

1. In this by-law, unless inconsistent with the context –

“**animal**” includes a horse, bovine, donkey, sheep, goat, pig, ostrich, dog, cat or the hybrid of any such animal, and “**animals**” will have a corresponding meaning;

“**Council**” means —

- (a) the Municipality, exercising its legislative and executive authority through its municipal council;
- (b) its successor-in-title;
- (c) a structure or person exercising a delegated power or carrying out an instruction, where any power in this By-law has been delegated or sub-delegated, or an instruction given, as contemplated in section 59 of Systems Act; and
- (d) a service provider fulfilling a responsibility under this By-law;

“**Court**” means a Magistrate’s Court as referred to in section 166(d) of the Constitution, 1996, having jurisdiction in the area in which the pound is situated;

“**Gazette**” means the official Provincial Gazette of KwaZulu-Natal;

“**municipality**” means the \_\_\_\_\_ municipality established in terms of section 155(6) of the Constitution, 1996, and established by and under sections 11 and 12 of the Structures Act, read with sections 3, 4 and 5 of the KwaZulu-Natal Determination of Types of Municipality Act, 2000 (Act No. 7 of 2000);

“**owner**” includes an owner who is known, or whose identity, with the exercise of reasonable diligence, can be ascertained, and in relation to any –

- (a) animal, includes the agent of the owner or other person having the lawful custody or possession of such animal; or
- (b) land, includes the owner, lessee or lawful occupier of such land or his or her agent;

**"pound"** means a pound established as contemplated in section 3;

**"poundkeeper"** means the person appointed from time to time as contemplated in section 4 and includes any person acting for or on behalf of the appointed poundkeeper;

**"public place"** means any place to which the public has access including, without limiting the generality of the foregoing any –

- (a) square;
- (b) park;
- (c) recreation ground;
- (d) sports ground;
- (e) open space;
- (f) beach;
- (g) shopping centre on municipal land;
- (h) unused or vacant municipal land; or
- (i) cemetery;

**"public road"** means a public road as contemplated in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996); and

**"service delivery agreement"** means a service delivery agreement as defined in section 1 of the Systems Act.

**"Structures Act"** means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

**"Systems Act"** means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

### **Application**

2. This By-law applies to the area of jurisdiction of the Municipality: Provided that nothing prevents any animal detained in terms of this By-law from being impounded in a pound or any similar facility established by any other municipality, or other lawful authority.

**Establishment of pound**

3.(1) The Municipality must establish a pound at any convenient place within its area of jurisdiction: Provided that the Municipality may, on application, enter into a service delivery agreement with an institution or person mentioned in section 76(b) of the Systems Act, to provide for the establishment and operation of a pound to service its area of jurisdiction.

(2) The Municipality must give notice of the establishment of a pound by publishing a notice in at least two newspapers circulating in the area of jurisdiction of the Municipality.

(3) A person who intends to establish a pound as contemplated in subsection (1), must apply in the prescribed manner to the Council as contemplated in subsection (4).

(4) Council must within 90 days of receipt of an application contemplated in subsection (1) and any other information at his or her disposal, if any, relating to the application –

- (a) approve an application for registration and issue a registration license;
- (b) approve an application for registration and issue a registration license subject to conditions determined by the Council; or
- (c) reject an application and provide written reasons for the rejection of the application.

(5) Council may at any time revoke a license after due consideration of the circumstances and consultation with the owner of the pound and must notify the owner of the pound in writing with reasons for such a decision.

**Appointment of poundkeeper**

4. The Municipality must, in terms of its human resource policy, appoint a suitably skilled and experienced person as a poundkeeper, unless the pound is established and operated in terms of a service level agreement contemplated in section 3(1).

**Trespassing or straying animals may be impounded**

5.(1) The owner of land upon which any animal is found trespassing may seize such animal: Provided that such animal may not be removed to a pound before notice is given to the owner in writing no less than 48 hours prior to the removal to the pound.

(2) Any animal found straying untended upon any public road or public place may be seized for impounding by –

- (a) a member of the South African Police Services;
- (b) a member of the South African National Defence Force;
- (c) a member of the KwaZulu-Natal Road Traffic Inspectorate;
- (d) a member of the municipal protection services; or
- (e) the owner of any land through or alongside which such road passes or which abuts on such public place.

(3) A person may not keep an animal, seized for purposes of impounding in terms of subsections (1) and (2), for a period longer than six hours without supplying such animal with adequate food and water.

(4) Any person who has seized an animal for purposes of impounding must comply with the provisions of the Code of Good Practice on the Handling and Transportation of Impounded Animals contained in Schedule 1.

#### **Animals too vicious, intractable or wild to be impounded**

6. If a State Veterinarian or official contemplated in section 5(2)(a) to (d) is satisfied that an animal found trespassing on any land, or straying untended upon any public road or public place, is too dangerously vicious, intractable or wild to be impounded, he or she may authorise the humane destruction or other disposal of the animal, after giving written reasons and written notice thereof to the owner of the animal.

#### **Release of animals before removal to pound**

7.(1) The owner of an animal, seized in terms of section 5(1) may apply to the owner of land contemplated in section 5(1) for the release of such animal prior to its removal to the pound.

(2) The owner of land referred to in section 5(1) –

- (a) may release such animal forthwith; or
- (b) may refuse the release of the animal, whereupon he or she may apply to Court for authority to impound the animal or to claim any damages he or she may have suffered, in which event the Court may make any order, including an order as to costs that the Court deems just and equitable.



(3) The owner of an animal seized in terms of section 5(2) may apply for the release of such animal prior to its removal to the pound, in which event the person who seized the animal must release such animal forthwith.

#### **Care of trespassing animals**

8. A person may not work, use or ill-treat an animal found trespassing on any land or whilst it is in the process of being removed to a pound.

#### **Pound to which animals must be taken**

9. An animal seized for the purposes of impounding as contemplated in section 5, must be removed to the nearest accessible pound, by the shortest practical route, and within the shortest practical time: Provided that animals of different species must be separated at all times according to their species.

#### **Information to be supplied to poundkeeper**

10. A person sending animals to the pound must advise the poundkeeper in writing of –

- (a) the number and descriptions of the animals;
- (b) the land upon which they were found trespassing; and
- (c) the distance in kilometers, by the shortest practical route, between the place on such land where they were seized and the pound.

#### **Acceptance at pound of animals to be impounded**

11.(1) The poundkeeper may not refuse to accept an animal for impounding.

(2) The pound manager must, upon acceptance of a detained animal –

- (a) record the particulars furnished in terms of section 10 above and enter the same in a book maintained for the purpose;
- (b) furnish the person delivering the animal with a receipt reflecting –
  - (i) his or her name;
  - (ii) a description of the animal; and
  - (iii) the date and time of receipt of the animal at the pound; and
- (c) keep a copy of each receipt issued.

**Pound register**

12.(1) The poundkeeper must –

- (a) maintain a pound register containing the information contemplated in Schedule 2, which must be available for public inspection at all reasonable times; and
- (b) complete the pound register immediately upon the acceptance into the pound of any animal.

(2) If the poundkeeper –

- (a) neglects or refuses to comply with any of the provisions of subsection (1);
- (b) knowingly makes a false entry in the pound register;
- (c) fraudulently destroys or erases any previous entry in the pound register; or
- (d) wilfully delivers a false copy or extract from the pound register to any person,

he or she is guilty of an offence.

**Notice to owners of animals**

13. The owner of an animal contemplated in sections 5(1), 6, 14(2)(b), 17(b), 21(1)(b), and 23(a), must be notified by –

- (a) addressing a written notice to him or her; or
- (b) placing a copy of the notice to the owner on the Municipal Notice Board; and
- (c) publishing a copy of the notice on at least two consecutive days in a newspaper of general circulation in the Municipality.

**Care of impounded animals**

14.(1) The poundkeeper –

- (a) is responsible for the proper care of all impounded animals;
- (b) must ensure that fresh water and sufficient food is available to impounded animals at all times; and
- (c) is liable to the owner of an impounded animal for any damage caused by his or her wilful or negligent acts or omissions.

(2)(a) If the poundkeeper is of the opinion that an impounded animal is dangerously vicious, permanently disabled or terminally ill, he or she must apply to the Court, which may authorise the destruction or other disposal of the impounded animal, if the Court is satisfied that the condition of such animal warrants its destruction or disposal.

(b) Where the Court authorises the destruction or disposal of an animal on application by the poundkeeper, the poundkeeper must immediately notify the owner in writing of the order of Court and the destruction or disposal of the animal.

#### **Isolation of infected animals**

**15.** If the poundkeeper suspects, or is aware, that an impounded animal, or an animal to be impounded, is infected with any disease contemplated in the Animal Diseases Act, 1984 (Act No. 35 of 1984), he or she must –

- (a) provide separate accommodation for such animal;
- (b) immediately isolate the animal, and report the disease to the nearest State Veterinarian; and
- (c) immediately notify the owner of the animal of such disease in writing.

#### **Treatment of impounded animals**

**16.** The poundkeeper –

- (a) may not work or in any way make use of an impounded animal or permit any such animal to be worked or made use of by any other person; and
- (b) must ensure that all impounded male animals are at all times kept apart from female animals.

#### **Death of or injury to impounded animals**

**17.** If an impounded animal is injured or dies, the poundkeeper must –

- (a) record the injury or cause of death in the pound register referred to in section 12; and
- (b) notify the owner of the animal in writing of the injury or death.

#### **Copies of by-laws**

**18.** The poundkeeper must ensure that copies of this By-law in English and *isiZulu* are available at the pound for inspection.

#### **Fees and costs payable**

**19.** The poundkeeper must –

- (a) charge the owner of an impounded animal the fees as set by the Municipality from time to time as contemplated in section 75A of the Systems Act; and
- (b) recover the cost of any dipping, medical treatment, inoculation or other treatment that may be necessary or required in terms of this By-law or in accordance with any other law.

#### **Release of impounded animals**

**20.(1)** The poundkeeper must immediately release an impounded animal, and give the owner a receipt, upon the owner –

- (a) providing proof of ownership of such animal; and
- (b) paying the fees and costs contemplated in section 19.

(2) If the owner of an impounded animal is unable to pay the fees or costs contemplated in section 19, the poundkeeper may retain such animal in order to recover such fees or costs as may be due and payable.

#### **Sale of impounded animals**

**21.(1)** The poundkeeper must –

- (a) within 14 days of the impounding of an animal, apply to the Court for authority to sell the animal; and
- (b) in the application contemplated in paragraph (a), provide the Court with proof that he or she lodged a statement as contemplated in sub-section (2) with the owner.

(2) The statement contemplated in subsection (1)(b) must include –

- (a) the fees and costs due in terms of this By-law; and
- (b) the amount of any damages that the owner of the land on which the impounded animal trespassed, may have suffered.

(3) The Court, whether the amounts set forth in the statement contemplated in subsection

(1)(b) are disputed or not, must –

- (a) summarily enquire into the matter;
- (b) enquire whether notice was given to the owner of the animal by the poundkeeper; and
- (c) make such order as it considers just and equitable, including an order –
  - (i) as to costs; and

(ii) on the process to be followed by the poundkeeper in the sale of the animal.

#### **Poundkeeper may not purchase impounded animals**

22. The poundkeeper, or a family member, or a close associate of the poundkeeper, may not purchase an animal offered for sale at a pound sale, either personally or through any other person, directly or indirectly.

#### **Animals unsuccessfully offered for sale**

23. In the event that any animal is not sold as contemplated in section 21 –

- (a) the poundkeeper must immediately advise the Court and the owner of its estimated value and the fees and costs incurred; and
- (b) the Court may make such order as it may deem just and equitable.

#### **Proceeds**

24. All proceeds from the collection of fees and costs contemplated in section 19 must be paid into the municipal revenue fund: Provided that in the event that any impounded animal is sold at a price in excess of –

- (a) the fees and costs incurred; and
- (b) any damages awarded in terms of section 21(3)(c),

such excess must be paid to the owner within 30 days of the sale, unless the identity of the owner has not been established, in which event the excess must be paid into the municipal revenue fund.

#### **Action for recovery of damages**

25. Nothing in this By-law prevents the owner of land or any other person from instituting action against the owner of a trespassing animal, in any court with jurisdiction, for the recovery of damages suffered by reason of such trespassing animal.

#### **Procedure to be followed in application to Court**

26. An application to Court for –

- (a) the impoundment of an animal in terms of this By-law, must comply with the procedure contemplated in Rule 55 of the Rules of Court; and

(b) the sale of an impounded animal in terms of this By-law, must comply with the procedure contemplated in section 66 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), and Rule 41 of the Rules of Court, made by the Rules Board for Courts of Law in terms of section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), and published under Government Notice No. R.1108 in Regulation Gazette No. 980 of 21 June 1968, as amended from time to time, read with the necessary changes.

### **Indemnity**

27. The Municipality, poundkeeper and any officer, employee, or agent of the Municipality will not be liable for the death of or injury to any animal arising as a result of its detention, impounding or release, or arising during its impoundment.

### **Offences and penalties**

28. A person who –

- (a) releases an animal that was lawfully seized for the purpose of being impounded or which has been lawfully impounded;
- (b) unlawfully seizes an animal for the purpose of impounding it;
- (c) unlawfully impounds an animal; or
- (d) contravenes any provision of this By-law,

is guilty of an offence and is liable on conviction to a fine, or to imprisonment for a period not exceeding one year.

### **Schedules 1 and 2 form part of this By-laws**

29. Schedules 1 and 2 to this By-law form part of this By-law for all purposes.

### **Repeal of existing By-laws**

30. The Municipality's existing Pound by-laws are hereby repealed.

### **Short title**

31. This by-law will be called the \_\_\_\_\_ Municipality Pounds By-Law, 20\_\_\_\_.

**SCHEDULE 1****Code of Good Practice on the Handling and Transportation of Impounded Animals***(Section 5(4))***PART I****Paddock requirements**

1. Different species of animals must be kept in separate paddocks.
  
2. Animals may not be penned in overcrowded paddocks, and penning space provided for in each paddock must be sufficient to permit all animals to lie down at the same time and must not be less than 1,5 square metres of floor area for each animal.
  
3. Fractious animals may not be kept with other animals.
  
4. Young, weaned juvenile animals, may not be penned with adult animals, except in the case of mother and offspring.
  
5. Provision must be made in paddocks for –
  - (a) facilities such as racks, mangers or other suitable feed containers that are easy to clean, which will allow the feeding of an animal off the floor, and which can be serviced without disturbing the animals;
  - (b) water troughs with an adequate supply of suitable fresh water at all times;
  - (c) sufficient facilities for the adequate cleaning of paddocks; and
  - (d) facilities for the safe handling of animals.
  
6.
  - (a) The paddocks must at all times be maintained in a good state of repair.
  - (b) Sharp points such as wire ends, broken boards, jagged ends or protruding hinges or bolts, which could cause injury to animals, must be removed or otherwise suitably covered.

7. The floor of the entire paddock, including the off-loading banks, races, and passages, must be so constructed as to provide adequate non-slip surfaces that can be efficiently and suitably cleaned and kept dry and in a condition fit for the holding of animals.

## PART II

### Handling of animals

8. Animals must at all times be handled humanely and with patience and tolerance.

9. The following must be kept in mind when handling animals –

- (a) animals respond more readily to being driven when the driver stands behind the animal but within its field of vision; and
- (b) herd animals respond more readily to being driven when in a group rather than singly.

10. Animals may not be dragged by their legs, or carried by their head, ears or tail.

11. Young calves must be carried if they cannot walk with ease, by lifting the calf around the chest and hindquarters, alternatively they must be guided with one hand on the hindquarters and the other near shoulder or neck, and walked in the required direction at an appropriate and comfortable pace.

12. Only sticks with canvas or belting flaps may be used when driving animals and it is preferable to strike the ground behind the animal rather than to hit the animal.

13. Electric prodders, sticks or goads may not be used on young calves.

14. Electric prodders may not be used excessively or indiscriminately or applied to the face, anal or genital areas of animals.



**PART III****Movement of animals**

**15.** Animals driven on the hoof must at all times be under proper and competent supervision.

**16.** Animals on the hoof must be driven in a calm manner at a gait that is relaxed and comfortable, natural to that animal, and not faster than the pace of the slowest animal.

**17.** Animals may not be driven for periods in excess of 10 hours without being given rest of at least one hour and provided with sufficient suitable fresh water that is available to all the animals.

**18.** No animal on the hoof may be moved in excess of the following distances –

(a) during a journey of not more than one day's duration –

(i) 20 kilometres for sheep and goats; and

(ii) 30 kilometres for cattle; and

(b) during a journey of more than one day's duration –

(i) 20 kilometres during the first day and 15 kilometres during each subsequent day for sheep and goats; and

(ii) 25 kilometres during the first day and 20 kilometres during each subsequent day for cattle.

**19.** Animals must be watered and fed immediately on reaching their night camp or final destination, with sufficient food of a quality and of a type compatible with the species.

**20.** Animals may not be moved in the dark.

**21.** No sick, injured or disabled animal may be moved on the hoof.

## PART IV

### Vehicles used in transporting animals

22. Vehicles and all trailers used in the transport of hoofed animals must be suitable for the transport of such animals and in a roadworthy condition.

23. All vehicles and trailers referred to in item 22 must have –

(a) a suitable non-slip floor which may not impede the cleaning of the floor of the vehicle, with hinged or removable battens or steel grids being permissible;

(b) adequate ventilation and light whilst in motion as well as when stationary, with no vehicle being totally enclosed;

(c) adequate protection from exhaust gasses, as exposure to exhaust fumes could interfere with the animals' respiration or cause distress;

(d) sidewalls high enough to prevent animals from escaping or falling out of the vehicle:

Provided that –

(i) the sides and partitions, when used in a vehicle to separate animals carried therein, must be of a height not lower than the shoulder joint of the largest animal being transported;

(ii) in the case of cattle other than calves, the minimum height must be 1 800 millimetres; and

(iii) the minimum height must be 750 millimetres in the case of any smaller animals;

(e) in multi-tier vehicles, heights between decks must be adequate, and in case of sheep and pigs not less than 1 000 millimetres, to enable the largest animals to stand naturally, freely and fully erect and to allow adequate space for the free flow of air above the animals;

(f) floors that are solid and impervious;

(g) loading and offloading openings at the rear of the vehicle that are the full width of the vehicle or, if at the sides, a width not less than 2 400 millimetres; and

(h) gates, with or without partitions –

(i) of a design and construction strong enough and suitable for the conveyance of the intended consignment; and

(ii) that open and close freely and are able to be well-secured.

**24.** The density of animals packed into any given space must be such as to ensure the safety and comfort of the animals during transport, and the recommended floor space per animal is–

- (a) 1,4 square metres per large animal; and
- (b) 0,5 square metre per small animal.

## **PART V**

### **Watering and feeding of live animals prior to loading**

**25.** Animals must be provided with sufficient and suitable food and fresh water until the commencement of the journey.

### **Loading and off-loading procedure**

**26.** Loading and off-loading into or out of a vehicle must be accomplished as quietly and calmly as possible, with patience and tolerance and without undue harassment, terrifying of the animals, bruising, injury, suffering or undue stress.

**27.** No animal may be loaded or off-loaded by lifting by the head, fleece, skin, ears, tails, horns or legs.

**28.** No animals may be loaded or off-loaded otherwise than –

- (a) by means of a ramp with a non-slip surface, sturdy enough to support the weight of the species of animals being handled, with side panels or bars adequate to prevent animals escaping or falling off the ramp and of an incline not steeper than 25 degrees; or
- (b) at a loading bank equal to the height of the floor of the vehicle or, at off-loading, not more than 310 millimetres below the level of the off-loading vehicle and with an incline not exceeding 25 degrees.

**29.** Where a truck is equipped with an onboard removable loading ramp it must have a non-slip surface and be of a sufficient length when lowered, that the inclination is no steeper than

the inclines referred to in item 28, with the distance from the ground to the heel of the ramp not exceeding 120 millimetres.

**30.** Ramps must be correctly adjusted to the exact height of the vehicle's floor.

**31.** Journeys must commence as soon as possible after the live animals have been loaded and the animals must be promptly off-loaded upon arrival at the destination.

**32.** Unless adequate provision has been made for effective separation, different species of animals may not be loaded and transported in the same vehicle.

**33.** Animals of different ages, sizes and sexes may not be loaded and transported in the same vehicle unless adequate provision has been made for the effective separation of such animals.

**34.** Adult horned cattle may not be transported with polled cattle and they must also be penned separately.

**35.** When there is reason to believe that an animal is likely to give birth in the course of a proposed journey, the animal may not be loaded onto a vehicle.

**36.** In the case of an animal giving birth during transport, the necessary measures must be taken to ensure the protection of the mother and offspring from being trampled or otherwise injured or harassed by other animals.

**37.** In the event of –

- (a) a breakdown of the transport vehicle;
- (b) an accident or collision in which the transport vehicle is involved; or
- (c) injury to, or death of, any animal in transit,

the carrier must immediately report the details to, and request assistance from –

- (i) in the case of paragraph (a), a breakdown service;
- (ii) in the case of paragraph (b), the South African Police and the traffic authorities; or
- (iii) in the case of paragraph (c), a veterinarian.

## **PART VI**

### **Restraining of animals during transportation**

**38.** Where the transport of any animal may cause injury to itself or any other animal, it must be restrained in such a manner as to prevent such injury.

**39.** No animals may be kept in restraint for more than 4 hours in any 24-hour period.

**40.** No wire or bailing twine may be used for tying the animal's legs or feet.

**41.** To avoid strangulation or neck-break, a slipknot may not be used where animals are secured to the vehicle by horns or neck, and the rope must be attached to the vehicle at the level of the animal's knees so that in the event of the animal falling, the possibility of serious injury or death is reduced, with the rope being long enough to allow the animal to lie comfortably in a natural position with its head upright.

**SCHEDULE 2**  
**Pound register information**  
(Section 12)

A pound register must, at least, contain the following information –

1. Name of pound
2. Date of receipt of animal
3. Number and description of animals
4. Brands or markings on animal
5. Ear tag number assigned by the poundkeeper
6. Name and address of person who seized the animal
7. Name and address of person who delivered the animal to the pound
8. Name and address of owner of land
9. Name and address of owner of animal
10. Name and address or description of place where animal was found
11. Distance from location where animal was seized to pound
12. Particulars of damage caused by the animal
13. Transport fees payable
14. Details of destruction or disposal of animal
15. Cause of death or injury of impounded animal
16. Description and amount of pound fees
17. Damages awarded by Court
18. Date of release of animal
19. Date of sale of animal
20. Proceeds of sale of animal
21. Name and address of purchaser
22. Excess amount (if any) paid to owner or municipality
23. Receipt number
24. Details of Order of Court with regard to animal not sold in execution

## CREDIT CONTROL BY- LAW

Be it enacted by the Council of the \_\_\_\_\_ Municipality, in terms of section 156(2) of the Constitution of the Republic of South Africa, 1996, read with section 11(3)(m) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), as follows:

### ARRANGEMENT OF SECTIONS

#### *Section*

1. Definitions
2. Application of this By-law
3. Provision of municipal services to applicants
4. General terms and conditions for the provision of municipal services
5. Estimated consumption
6. New service agreements and deposits or security by existing customers
7. Termination of service agreements
8. Notices of compliance
9. Accounts
10. Account information
11. Account Administration
12. Queries or complaints in respect of accounts
13. Appeals against decision by service providers on queries and complaints
14. Arrear accounts
15. Action to secure payment
16. Power to terminate or restrict provision of municipal services
17. Reinstatement of municipal services
18. Interest charges
19. Collection charges
20. Full and final settlement of an amount
21. Accounts outstanding after the due date
22. Agreements for the payment of arrears in instalments
23. Disputes as to amounts owing
24. Dishonoured cheques
25. Registration as indigent person
26. Council's right of access to premises
27. Conflicting laws

28. Preservation of rights consequent on non-compliance
29. Transmission of documentation
30. Prima facie evidence of documentation
31. Appeals
32. Offences
33. Repeal of By-laws
34. Short title and commencement

## CHAPTER 1 DEFINITIONS AND APPLICATION

### Definitions

1. In this by-law, unless inconsistent with the context –

“**account**” means a notification by means of a statement of account to a person liable for payment of any amount for which he or she is liable to pay the Council in respect of the following –

- (a) electricity consumption or availability fees based on a meter reading or estimated consumption;
- (b) water consumption or availability fees based on a meter reading or estimated consumption;
- (c) refuse removal and disposal~
- (d) sewerage services and sewer availability fees;
- (e) rates;
- (f) interest; and
- (g) miscellaneous and sundry fees and collection charges.

“**Act**” means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

“**authorised official**” means any official or agent of the Council who has been authorised by it to administer, implement and enforce the provisions of this By-law;

“**By-law**” means a By-law adopted and promulgated by the Council;

“**collection charges**” means charges which may be recovered by the Council in terms of section 75A of the Act, and includes the cost –



- (a) of reminding customers of arrears;
- (b) for the termination, restriction and reinstatement of municipal services;
- (c) of any notice rendered, sent or delivered in terms of this By-law; and
- (d) all legal costs, including attorney and client costs, incurred in the recovery of arrear amounts;

**“Council”** means —

- (a) the \_\_\_\_\_ Municipality, exercising its legislative and executive authority through its municipal council;
- (b) its successor-in-title;
- (c) a structure or person exercising a delegated power or carrying out an instruction, where any power in this By-law has been delegated or sub-delegated, or an instruction given, as contemplated in section 59 of the Act; and
- (d) a service provider fulfilling a responsibility under this By-law;

**“customer”** means any occupier of premises to which the Council has agreed to provide or is actually providing any municipal service, or if there is no occupier, the owner of the premises concerned;

**“fee”** means a fee prescribed for or in respect of any municipal service;

**“municipal manager”** means the person appointed municipal manager in terms of section 54A of the Act and includes any person acting in that capacity;

**“municipal service”** means any or all of the services specified in subparagraphs (i) to (iv), inclusive, of section 2(1)(b);

**“occupier”** means any person who occupies any premises or part thereof, without regard to the title under which he or she so occupies;

**“owner”**—

- (a) in relation to a property referred to in paragraph (a) of the definition of “property”, means a person in whose name ownership of the property is registered;
- (b) in relation to a right referred to in paragraph (b) of the definition of “property”, means a person in favour of whom the right is registered;

(c) in relation to a right referred to in paragraph (c) of the definition of “property”, means a person in favour of whom the right is registered or to whom it was granted in terms of any law; and

(d) in relation to public service infrastructure referred to in paragraph (d) of the definition of “property”, means the organ of state which owns or controls that public service infrastructure, and includes a person who the Council may for the purpose of this By-law regard as the owner of a property in the following cases –

- (i) A trustee, in the case of a property in a trust excluding state trust land;
- (ii) an executor or administrator, in the case of a property in a deceased estate;
- (iii) a trustee or liquidator, in the case of a property in an insolvent estate or the owner of which is in liquidation;
- (iv) a judicial manager, in the case of a property in the estate of a person under judicial management;
- (v) a curator, in the case of a property in the estate of a person under curatorship;
- (vi) a person in whose favour a usufruct or other personal servitude is registered, in the case of a property that is subject to a usufruct or other personal servitude;
- (vii) a lessee, in the case of a property that is registered in the name of the Council and is let by it; or
- (viii) a buyer, in the case of a property that was sold by the Council and of which possession was given to the buyer pending registration of ownership in the name of the buyer;

“**Policy**” means the Credit Control and Debt Collection Policy adopted by the Council;

“**prescribed**” means prescribed by the Council from time to time, by resolution;

“**premises**” means any piece of land, with or without any building or structure thereon, the external surface boundaries of which are delineated on –

- (a) a general plan or diagram registered in terms of the Land Survey Act, 1927 (Act No. 9 of 1927), or in terms of the Deeds Registry Act, 1937 (Act No. 47 of 1937); or
- (b) a sectional plan registered in terms of the Sectional Titles Act, 1986 (Act No. 95 of 1986),

which is situated within the area of jurisdiction of the Council;

**“property”** means –

- (a) immovable property registered in the name of a person, including, in the case of a Sectional title scheme, a sectional title unit registered in the name of a person;
- (b) a right registered against immovable property in favour of a person, excluding a mortgage bond registered against the property;
- (c) a land tenure right registered in favour of a person or granted to a person in terms of any law; or
- (d) public service infrastructure; and

**“rates”** means a municipal rate on property levied in terms of the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004).

### **Application of this By-law**

2.(1) This By-law only applies in respect of amounts of money due and payable to the Council for –

- (a) rates;
- (b) fees and surcharges on fees in respect of the following municipal services –
  - (i) The provision of water and the availability thereof;
  - (ii) refuse removal and disposal;
  - (iii) sewerage and the availability thereof; and
  - (iv) electricity consumption and the availability thereof;
- (c) interest which has or will accrue in respect of any amount of money due and payable or which will become due and payable to the Council in regard to rates and municipal services; and
- (d) collection charges;

(2) This By-law also applies to any municipal service provided through pre-paid meters, in so far as the By-law may be relevant.

## **CHAPTER 2**

### **SERVICE AGREEMENTS AND GENERAL TERMS AND CONDITIONS OF PROVISION OF MUNICIPAL SERVICES**

#### **Provision of municipal services to applicants**

3.(1) No municipal service may be provided to any applicant, unless and until –

- (a) application for the service has been made in writing on a form substantially similar to the form prescribed;

- (b) any information and documentation required by the Council have been furnished;
- (c) a service agreement, in the form substantially similar to the form of agreement prescribed, has been entered into between the customer and the Council; and
- (d) an amount equal to the amount prescribed, in cash or a bank cheque, has been deposited as security or other acceptable security, as prescribed, has been furnished.

(2) If an applicant for a municipal service is an existing customer of the Council in respect of any other municipal service in respect of which the account is in arrears –

- (a) such arrears must be paid; or
- (b) an agreement for payment of the arrears in terms of section 22 must have been entered into and payment in terms thereof must not be in arrears, before an application for a new service in terms of this section may be considered.

(3) The Council may at any time require a customer to increase a deposit paid or security furnished in terms of subsection (1)(d);

(4) No interest is payable on any amount deposited in terms of subsection (1)(d) or (3).

#### **General terms and conditions for the provision of municipal services**

4. The general terms and conditions for the provision of any municipal service set out in a service agreement contemplated in section 3(1)(c) are deemed to be incorporated in this By-law and apply to the provision of such service to any customer.

#### **Estimated consumption**

5. The Council may have an estimate made of the consumption of water or electricity for any relevant period if –

- (a) no meter reading could be obtained in respect of the period concerned; or
- (b) no meter has been installed to measure the consumption on the premises concerned, and the customer concerned is liable for payment of the prescribed fee in respect of such estimated consumption.

**New service agreements and deposits or security by existing customers**

6.(a) Any existing customer, or the trustee, liquidator, judicial manager or curator of such customer, may be required by the Council to enter into a new service agreement to replace an existing agreement of the customer concerned, and to pay a deposit or furnish security contemplated in section 3, notwithstanding the fact that a service agreement was previously entered into in respect of the municipal service concerned and the provisions of section 3(3) apply in respect of such new agreement.

(b) The provisions of section 3(4) apply to a deposit referred to in subsection (1).

**Termination of service agreements**

7.(1) Subject to the provisions of sections 14 and 22 –

(a) a customer may terminate an agreement for the provision of any municipal service by notice in writing of not less than seven days' to the Council, of his or her intention to do so;

(b) the Council may, subject to compliance with the provisions of this By-law and any other applicable law, by notice in writing of not less than 14 days, to a customer, terminate his or her agreement for the provision of the municipal service concerned, if the customer –

(i) has not used the municipal service during the preceding six months and has not made arrangements to the satisfaction of the Council for the continuation of the agreement; or

(ii) has, in relation to the municipal service concerned, failed to comply with any provision of this By-law and has failed to rectify such failure after the service on him or her of a notice of compliance in terms of section 8;

(iii) has failed to pay any prescribed fee, collection charge or interest due and payable in respect of the municipal service concerned;

(iv) has made an arrangement with another services provider to provide the municipal service concerned to the customer; or

(v) has vacated the premises to which the agreement concerned relates.

(2) A customer to whom notice has been given in terms of subsection (1)(b), may within the period of 14 days referred to in that subsection, make written representations to the Council why the agreement concerned should not be terminated and if such representations are unsuccessful, either wholly or in part, the agreement concerned may only be terminated if the decision on such representations justifies it.

**Notices of compliance**

8. If a customer fails or refuses to comply with any provision of this By-law, a notice of compliance must be served on that customer, requesting him or her, subject to the provisions of section 7(2), to forthwith comply with the provision concerned to avoid the termination of his or her agreement in terms of section 7(1 )(b)(ii).

**CHAPTER 3  
ACCOUNT ADMINISTRATION****Accounts**

9.(1) Accounts must be rendered and administered in accordance with the Policy, other prescribed requirements and any other law.

(2) Failure by the Council to render an account does not relieve a customer of the obligation to pay any amount that is due and payable in terms of this By-law.

(3) The Council may, in accordance with the provisions of section 102 of the Act –

- (a) consolidate any separate accounts of a customer liable for payments in terms of this By-law to the Council;
- (b) credit any payment by such customer against any account of that customer; and
- (c) implement any of the debt collection and credit control measures provided for in this By-law in relation to any arrears on any of the accounts of a customer.

(4) The amount due and payable by a customer constitutes a consolidated debt, and any payment made by a customer of an amount less than the total amount due, will, subject to the provisions of section 20(a), be allocated in reduction of the consolidated debt in the order prescribed.

(5)(a) Any amount paid by a customer in excess of an existing debt may be held in credit for the customer in anticipation of future rates and fees for municipal services or for the purposes contemplated in section 15(b).

(b) No interest is payable on any amount contemplated in paragraph (a)

**Account information**

10. Accounts must contain the following –

(a) the consumption or estimated consumption as determined for the measuring or consumption period;

- (b) the measuring or consumption period;
- (c) the applicable prescribed fee;
- (d) the amount due based on the estimated consumption;
- (e) the amount due and payable for any other municipal service;
- (f) the amount in arrears, if any;
- (g) the interest payable on any arrears, if any;
- (h) collection charges insofar as they may be relevant;
- (i) the final date for payment; and
- (j) the methods, places and approved agents where payment may be made.

### **Account administration**

- 11.** The Council must, subject to the provisions of section 5, endeavour to ensure —
- (a) accurate metering of consumption at fixed intervals with the minimum delay between service connection and first and subsequent rendering of accounts;
  - (b) accurate and up-to-date information in accounts;
  - (c) accurate monthly accounts with the application of the appropriate and correct prescribed fees, rates and other related amounts due and payable;
  - (d) the timely dispatch of accounts;
  - (e) adequate provision and the efficient operation of facilities for payment throughout the municipal area;
  - (f) the appointment of agents to accept payments on behalf of the Council; and
  - (g) appropriate hours of business in order to facilitate account payments.

### **Queries or complaints in respect of accounts**

**12.(1)** A customer may lodge a query or complaint in respect of the accuracy of any amount due and payable in terms of an account rendered to him or her in terms of this By-law.

(2) A query or complaint must be lodged with the Council before or on the due date for payment specified in the account concerned, or as soon as reasonably possible thereafter.

(3) If a query or complaint is lodged after the due date for payment specified in the account concerned, such query or complaint must be accompanied by the payment of at least an amount equal to the average amount per month that was due and payable in respect of the service concerned during the preceding three months.

(4) An authorised official must register the query or complaint and provide the customer with a reference number.

(5) The Council must –

- (a) investigate or cause the query or complaint to be investigated within 14 days, or as soon as possible after the query or complaint was received; and
- (b) inform the customer, in writing, of its finding as soon as possible after conclusion of the investigation, instructing that any amount found to be due and payable must, subject to the provisions of section 22, be paid within 21 days from the date on which the customer is notified thereof, unless an appeal is lodged within that period in terms of subsection (6) or section 13.

(6) A customer may, subject to the provisions of section 13, lodge an appeal with the municipal manager in terms of section 62 of the Act against a decision referred to in subsection (5), within 21 days of the date of the notification of the decision.

(7) The Council must inform the customer concerned in writing of the decision on the appeal, instructing that any amount found to be due and payable, must be paid within seven days from the date on which the customer is notified thereof.

#### **Appeals against decision by service providers on queries and complaints**

**13.(1)** If a decision contemplated in section 12(5) has been made in respect of a municipal service provided by a service provider fulfilling a responsibility under this By-law, assigned to it in terms of section 81(2) of the Act, a customer may lodge an appeal against that decision by giving written notice of the appeal and reasons to the chief executive officer of the service provider concerned, within 21 days of the date of the notification of the decision.

(2) The chief executive officer must promptly submit the appeal to the appropriate appeal authority specified in subsection (4).

(3) The appeal authority must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation may detract from any rights that may have accrued as a result of the decision.



- (4) If an appeal is against a decision taken by –
- (a) a staff member, other than the chief executive officer, the chief executive officer is the appeal authority;
  - (b) the chief executive officer or any committee of the service provider –
    - (i) the board of directors of the service provider; or
    - (ii) a committee of directors who were not involved in the decision concerned and appointed by the board of directors for this purpose, is the appeal authority.
- (5) An appeal authority contemplated in subsection (4), must commence with an appeal within 42 days and decide the appeal within a reasonable period.
- (6) A service provider must comply with the provisions of section 12(7).

#### **Arrear accounts**

14.(1) If a customer fails to pay an amount due and payable for any municipal service or rates on or before the due date for payment specified in the account concerned, a final demand notice may be sent to the customer.

(2) Failure by the Council to send a final demand notice does not relieve a customer from paying the arrears concerned.

- (3) A final demand notice referred to in subsection (1), must contain the following –
- (a) the amount in arrears and any interest payable, and a statement that payment must be made within 14 days of the date of the final demand notice;
  - (b) that the customer may in terms of section 22, conclude a written agreement with the Council for payment of the amount in arrears in instalments within the period contemplated in paragraph;
  - (c) that if no such agreement is entered into within the period stipulated in paragraph (b), that the water or electricity services may be terminated or restricted and that legal action may be instituted for the recovery of any amount in arrear without further notice;
  - (d) that the customer's name may be made public, and may be listed with a credit bureau in terms of section 21(1)(a);
  - (e) that the account may be handed over to a debt collector or attorney for collection;

- (f) that proof of registration as an indigent person in terms of section 25 and any other documentation required by the Council must be furnished to the Council on or before the date for payment contemplated in paragraph (a);
- (g) that an indigent person referred to in paragraph (f) is only entitled to benefits relating to municipal services as stipulated in the Council's policy relating to the supply of municipal services to indigent persons; and
- (h) that the customer has an opportunity to make representations in writing on any matter referred to in a final demand notice within the period of 14 days contemplated in paragraph (a).

#### **Action to secure payment**

**15.** The Council may, in addition to the normal civil legal steps to secure payment of any in arrear amount of accounts, take the following action to secure payment of such amount –

- (a) The termination or restriction of the provision of any municipal service in terms of section 16; and
- (b) the allocation of the whole or a portion of a payment of an account, or the whole or a portion of a pre-payment for future accounts as contemplated in section 9(5)(a), as payment for arrear municipal service fees or rates, in terms of section 20.

#### **Power to terminate or restrict provision of municipal services**

**16.(1)** For the purposes of subsection (2), a final demand notice means a notice contemplated in sections 12(5)(b), 12(7), 13(6) and 14(1).

(2) Subject to the provisions of subsection (4), the Council may terminate or restrict the provision of water or electricity, or both, whichever service is relevant, in terms of the prescribed termination and restriction procedures, to any premises if the customer in respect of the municipal service concerned –

(a) fails to make full payment of arrears specified in a final demand notice sent to the customer concerned, before or on the date for payment contemplated in sections 12(5)(b), 12(7), 13(6) or 14(1), whichever is applicable, and no circumstances have arisen which requires the Council to send a further final demand notice to that customer in terms of any of those sections, and the customer –

- (i) fails to enter into an agreement in terms of section 22, in respect of the arrears concerned before termination or restriction of the service concerned; or

- (ii) fails to submit written proof of registration as an indigent person in terms of section 25, before such termination or restriction;
  - (b) fails to pay any instalment payable in terms of an agreement referred to in paragraph (a)(i) before or on the due date;
  - (c) fails to comply with any condition of provision in respect of electricity or water, as the case may be, imposed by the Council;
  - (d) obstructs the efficient provision of electricity or water to another customer;
  - (e) provides electricity or water to a person who is not entitled thereto or permits such provision to continue;
  - (f) causes a situation relating to electricity or water which, in the opinion of the Council, is dangerous or constitutes a contravention of any applicable law, including the common law;
  - (g) in any way reinstates the provision of a previously terminated or restricted electricity or water service;
  - (h) is placed under provisional sequestration, liquidation or judicial management, or commits an act of insolvency in terms of the Insolvency Act, 1936 (Act No. 24 of 1936) or is subject to an administration order granted in terms of section 74 of the Magistrates Court Act, 1944 (Act No. 32 of 1944), and there is a failure to enter into a new service agreement within 14 days of the Council requiring such service agreement in terms of section 6.
- (3) The Council may send a termination notice to a consumer informing him or her –
- (a) that the provision of the service concerned will be, or has been terminated on the date specified in such notice; and
  - (b) of the steps which can be taken to have the service reinstated.
- (4) Any action taken in terms of subsections (1) and (2) is subject to compliance with:
- (a) sections 3 and 4 of the Water Services Act, 1997 (Act No. 108 of 1997), if the provision of water is involved;
  - (b) the relevant provisions of the Electricity Act, 1987 (Act No. 41 of 1987), if the provision of electricity is involved;
  - (c) the relevant provisions of the Health Act, 2003, (Act No. 61 of 2003), and any regulations made in terms of that Act; and
  - (d) the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), in so far as it is applicable.

**Reinstatement of municipal services**

17.(1) The Council must reinstate full levels of provision of any electricity or water service terminated or restricted in terms of section 16(1) after –

- (a) the full amount of arrears, including interest and collection charges, if any, have been paid; or
- (b) an agreement for payment of the arrears contemplated in paragraph (a) has been entered into in terms of section 22; or
- (c) the full amount of arrears in respect of any agreement referred to in paragraph (b), including interest and collection charges if any, and any increase deposit, have been paid, or any additional security required has been provided, and any other condition of the Policy that the Council may consider appropriate, has been complied with.

(2) Any reinstatement in terms of subsection (1) may only be done after an authorised official has issued a written certificate of authorisation to the effect that every applicable condition contemplated in subsection (1) has been complied with and that the municipal service concerned may be reinstated.

**Interest charges**

18. All arrears in respect of accounts for rates and municipal services bear interest at a rate prescribed.

**Collection charges**

19. A prescribed collection charge may be levied against the account of a customer, in respect of any relevant action taken in terms of, or for the purposes of, this By-law.

**Full and final settlement of an amount**

20.(a) The Council may appropriate monies received in respect of any debt contemplated in this By-law at its sole discretion, unless the customer otherwise instructs in writing.

(b) If any amount due and payable to the Council in terms of this By-law has not been paid in full, any lesser amount tendered to and accepted by any municipal employee, does not constitute payment in full and final settlement of the full amount, unless the lesser amount was accepted in full and final settlement in writing, under a power delegated or sub-delegated to such employee in terms of section 59 of the Act.

**Accounts outstanding after the due date**

21.(1) If an account for assessment rates or any municipal service rendered to a customer remains unpaid, wholly or in part, after the due date for payment stipulated in the account concerned –

- (a) the defaulting customer's name may be made public, and may be listed with a credit bureau; and
- (b) may be handed over to a debt collector or an attorney for collection.

(2) A customer is liable for any interest and collection charges and in addition payment of a higher deposit or the provision of additional security, if required by the Council.

(3) No action taken in terms of this section may be suspended or withdrawn, unless the arrears, any interest thereon, collection charges, and higher deposit, if required by the Council, have been paid in full or, instead of a higher deposit, additional security has been provided, if so required.

**Agreements for the payment of arrears in instalments**

22.(1) A customer with positive proof of identity or a person authorised, in writing, by such customer, may, subject to the approval of the Council, enter into an agreement in a form substantially similar to a form prescribed, for the payment of arrears in instalments.

(2) The amount due and payable by a customer in terms of an agreement contemplated in subsection (1), constitutes a consolidated debt and any payment made by a customer of an amount less than the total amount due, must be allocated in reduction of the consolidated debt in the order prescribed, unless the customer otherwise instructs in writing.

(3) A customer may be required to arrange a debit order for the payment of arrears in respect of which an agreement, contemplated in subsection (1), has been entered into.

(4) Subject to the provisions of subsection (5), no agreement for the payment of arrears may allow for a period of payment of longer than 24 months.

(5)(a) The Council may allow a period of payment in excess of 24 months for the payment of arrears, but not exceeding a period of 60 months, if special circumstances which the customer could not reasonably have prevented or avoided, prevail and which, in the opinion of the Council, warrant a longer period of payment.

(b) Documentary proof of any special circumstances as contemplated in paragraph (a), must be furnished by a customer on request by the Council.

(6) The Council must, in exercising its discretion in terms of subsection (5), have regard to a customer's –

- (a) credit record;
- (b) consumption;
- (c) ability to afford the proposed instalments, taking into account the customer's financial situation;
- (d) level of service;
- (e) previous breaches of agreements for the payment of arrears in instalments; and
- (f) any other relevant factor.

(7) A copy of an agreement contemplated in subsection (1), must, on request, be furnished to the customer concerned.

(8) If a customer fails to comply with an agreement contemplated in subsection (1), the total outstanding amount, including the arrears, any interest thereon, any collection charges, and payment of a higher deposit if required by the Council, will immediately become due and payable, and additional security, if so required, must be provided, without further notice.

(9) If a customer fails to comply with an agreement contemplated in subsection (1), entered into after receipt of a termination notice for water or electricity services, or both, as the case may be, the municipal service concerned may be terminated without further notice, in addition to any other action taken against or which may be taken against the customer concerned.

(10) No customer is permitted to enter into an agreement contemplated in subsection (1), if that customer has failed to honour a previous agreement for the payment of arrears in instalments, unless the Council otherwise decides.

(11) Once an agreement contemplated in subsection (1), has been concluded, the amount in arrears must be reflected as a current amount, and no further interest may be added.

**Disputes as to amounts owing**

23. If any dispute arises as to any amount owing by a customer, the customer must, pending resolution of that dispute, continue to make regular monthly payments in respect of rates, if applicable, and in respect of any municipal service concerned based on the average monthly fees for the preceding three months prior to the dispute arising, plus interest if applicable, until the resolution of that dispute.

**Dishonoured cheques**

24. If any payment is made to the Council by a negotiable instrument, and such negotiable instrument is dishonoured, the Council may levy costs and administration fees against the account of the defaulting customer at a prescribed rate.

**CHAPTER 4  
INDIGENT PERSONS****Registration as indigent person**

25.(1) A person who wishes to receive assistance in terms of the Council's policy for the provision of municipal services to indigent persons, must make application for registration as an indigent person on a prescribed form at any of the Council's offices.

(2) An application in terms of subsection (1), must be considered by the Council which must adhere to the principles of transparency, equity, consistency, non-discrimination, accessibility, empathy, integrity, confidentiality and objectivity during the evaluation process.

(3) An applicant, contemplated in subsection (1), must, at the request of the Council, furnish any further information to enable the Council to arrive at a decision and the Council may, for the purpose of properly evaluating the application, also conduct any investigation which it considers appropriate.

(4) An applicant must be informed that he or she will automatically be disqualified from receiving any assistance contemplated in subsection (1), and be liable to –

- (a) refund the amount of any such assistance received from the Council, if the application or information contemplated in subsection (3), contains any false information; and

(b) prosecution if any false information as contemplated in paragraph (a) is furnished by the applicant.

(5) If the Council finds an applicant to be indigent, such applicant is entitled to assistance in terms of the Policy referred to in subsection (1), and his or her personal particulars must be recorded in a prescribed register of indigent persons.

(6) The position of every indigent person so recorded, must be reviewed annually by an authorised official in accordance with the directives of the Council.

(7) A successful applicant must be informed in writing that he or she must immediately notify the Council when his or her indigent status has changed.

## **CHAPTER 5 MISCELLANEOUS**

### **Council's right of access to premises**

26. The Council may exercise its right of access to premises in terms of section 101 of the Act through the municipal manager or any authorised official or any duly appointed agent of the Council, authorised thereto in writing.

### **Conflicting laws**

27. If there is any conflict between a provision in this By-law and a provision of any other By-law, the provision in this By-law must prevail.

### **Preservation of rights consequent on non-compliance**

28. A failure by the Council to comply with any provision of this By-law does not in any way affect the liability of any person to pay any amount due and payable to the Council as contemplated in this By-law, nor the Council's right to recover such amount.

### **Transmission of documentation**

29. Subject to the provisions of any law, if in terms of or for the purposes of this By-law any written communication must or may be rendered, sent or delivered –



- (a) by the Council to any person, such communication must be –
- (i) delivered by hand –
    - (aa) to that person's domicilium citandi et executandi, as stipulated in an agreement entered into in terms of section 3(1)(c) or 6(a); or
    - (bb) in the absence of such agreement, to that person's most recently recorded address; or
    - (cc) to the premises concerned in respect of which rates are levied or any municipal service is provided, whichever is relevant; or
  - (ii) sent by post to the address referred to in subparagraph (i)(aa) or (bb), whichever is applicable, or to the address of the premises contemplated in subparagraph (i)(cc).
- (b) by any person to the Council, such communication must be –
- (i) delivered by hand to –
    - (aa) the Council's domicilium citandi et executandi stipulated in the agreement contemplated in paragraph (a)(i)(aa); or
    - (bb) another address, if the Council in writing furnished such an address to the person concerned; or
  - (ii) sent by post to the address referred to in subparagraph (i)(aa) or, in the circumstances contemplated in subparagraph (i)(bb), to the address contemplated in that subparagraph.

### **Prima facie evidence of documentation**

**30.** For the purposes of the recovery of any amount due and payable to the Council in terms of this By-law –

- (a) a copy of any relevant account; and
- (b) an extract from the Council's records relating to the quantity of consumption or provision of any municipal service and the period of provision of such service, certified by an authorised official as being correct,

constitute prima facie evidence of the information contained in such documents.

## **CHAPTER 6 APPEALS**

### **Appeals**

**31.(1)** A person whose rights are affected by a decision taken by any authorised official under this By-law, may appeal against the decision by giving written notice of the appeal and

reasons to the municipal manager within 21 days of the date of the notification of the decision.

(2) The municipal manager must promptly submit the appeal to the appropriate appeal authority mentioned in subsection (4).

(3) The appeal authority must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

(4) When the appeal is against a decision taken by –

(a) a staff member other than the municipal manager, the municipal manager is the appeal authority; or

(b) the municipal manager, the executive mayor is the appeal authority.

(5) An appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable period.

## CHAPTER 7 GENERAL

### Offences

32. Any person who -

(a) contravenes or fails to comply with any provisions of this By-law;

(b) fails to comply with any lawful instruction given in terms of this By-law; or

(c) obstructs or hinders any authorised official in the execution of his or her duties under this By-law –

will be guilty of an offence and will be liable on conviction to a fine not exceeding R5 000 or imprisonment for a period not exceeding 3 months or both.

### Repeal of existing By-laws

33. The Council's existing Credit Control and Debt Collection By-laws are hereby repealed.

**Short title and commencement**

**34.** This By-law will be called the \_\_\_\_\_ Municipality Credit Control By-law,  
20\_\_\_\_\_.

## STREET TRADING BY-LAW

Be it enacted by the Council of the \_\_\_\_\_ Municipality, in terms of section 156(2) of the Constitution of the Republic of South Africa, 1996, read with section 11(3)(m) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), as follows:

### ARRANGEMENT OF SECTIONS

#### *Section*

1. Definitions
2. Purpose of the By-law
3. Forms of informal trading
4. Freedom to engage in informal trading
5. Designated areas
6. Lease and allocation of lands
7. Environmental health and safety
8. Prohibition
9. Restrictions
10. Display of goods
11. Removal and impoundment
12. Disposal of impounded goods
13. Vicarious liability of persons carrying on informal trading
14. Offences and penalties
15. Policy
16. Repeal of By-laws
17. Short title

#### **Definitions**

1. In this By-law, unless inconsistent with the context –

“**the Act**” means the Business Act, 1991 (Act No. 71 of 1991) and includes the regulations promulgated thereunder,

“**approval**” means approval by an authorised official and “**approve**” has a corresponding meaning;

**"Authorised official"** means –

- (a) any official of the Municipality who has been authorised by the Municipality to administer, implement or enforce the provisions of this By-law;
- (b) a traffic officer appointed in terms of section 3A of the National Road Traffic Act, 1996 (Act No. 93 of 1996);
- (c) a member of the police service, as defined in terms of section 1 of the South African Police Services Act, 1995 (Act No. 68 of 1995); or
- (d) a peace officer, contemplated in terms of section 334 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977)

**"Council"** means —

- (a) the \_\_\_\_\_ Municipality, exercising its legislative and executive authority through its municipal council;
- (b) its successor-in-title;
- (c) a structure or person exercising a delegated power or carrying out an instruction, where any power in this By-law has been delegated or sub-delegated, or an instruction given, as contemplated in section 59 of the Local Government: Municipal Systems Act; 2000 (Act No. 32 of 2000); and
- (d) a service provider fulfilling a responsibility under this By-law;

**"demarcated stand"** means stand demarcated by Municipality for the purposes of street trading in terms of section 6(A)(3)(b) of the Act;

**"designated area"** means an area prescribed by the Council in terms of this By-law, subject to the Act, as the area in which informal trading can be conducted;

**"foodstuff"** means any article or substance, except a drug as defined in the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992), ordinarily eaten or drunk by persons or purporting to be suitable to be sold for human consumption and includes any part or ingredient or substance used or intended or destined to be used as a part or ingredient of any such article or substance, as defined in section 1 of the Foodstuff Cosmetics and Disinfectants Act, 1972 (Act No.54 of 1972).

**"garden" or "park"** means a garden or park to which the public has a right of access;

**"goods"** means any movable property used in connection with street trading and, without limiting the generality of the foregoing, includes products for sale, display tables, stands, receptacles, vehicles, structures or animals;

**"impoundment costs"** means all those costs incurred by the Council in respect of impounding and storing of impounded goods or property and, where applicable, costs incurred in respect of disposal of impoundment goods;

**"informal trader"** means the selling of goods and/or services by an informal trader in the designated area, which includes, without any limitation, the forms of trading included in this By-law;

**"intersection"** means an intersection as defined in the regulations promulgated in terms of the National Road Traffic Act, 1996 (Act No. 93 of 1996);

**"kerb line"** means, as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996), the boundary between the shoulder and the verge or, in the absence of a shoulder, the part between the edge of the roadway and the verge;

**"linear market"** means a designated area located in a pedestrian environment.

**"litter"** includes any receptacle, container or other matter, which has been discarded, abandoned or left behind by an informal trader or by his or her customers;

**"motor vehicle"** means any self-propelled vehicle as more fully defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996);

**"municipality"** means the \_\_\_\_\_ Municipality established in terms of section 155(6) of the Constitution of the Republic of South Africa, 1996, and established by and under sections 11 and 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998),

**"periodic markets"** means sale of legal goods and or services by individuals and or groups in locations designated for informal trading for a period no longer than 5 days;

**"prescribed"** means as determined by resolution of the Council from time to time;

“**property**” in relation to an informal trader, includes any article, goods container, motor vehicle or structure used or intended to be used in connection with informal trading;

“**public building**” means a building belonging to or occupied solely by any sphere of the government, including the Council;

“**public monument**” means any one of the public monuments and memorials as defined in terms of section 2 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999);

“**public place**” means any square, park, recreation ground or open space which is vested in the Council or to which the public has the right to use or is shown on a general plan of a township filed in the deeds registry or Surveyor-General’s office and has been provided for the use of the public or the owners of erven in such township;

“**public road**” means a public road as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996), and is any road, street or thoroughfare or any place commonly used by the public or any section thereof or to which the public or any section thereof has the right of access;

“**rental**” means an amount payable by the informal trader for the allocated trading space in the designated area as agreed between the Council and an informal trader;

“**roadway**” means a roadway as defined in section 1 of the National Road Traffic Act, 1996, (Act No. 93 of 1996), but excludes a public place;

“**sell**” includes –

- (a) barter, exchange or hire out;
- (b) display, expose, offer or prepare for sale;
- (c) store on a public road or public place with a view to sell; or
- (d) 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 No. 93 of 1996;

“**shoulder**” means, as defined in the National Road Traffic Act, 1996 (Act No. 93 of 1996) that portion of the road, street or thoroughfare between the edge of the roadway and kerb line;

“**special events**” means special events that occur from time to time, including without limitation, sports events, religious events, social, cultural or political gatherings and music festivals;

“**street furniture**” means any furniture installed by the Council on the street for public use;

“**street trader**” means a person who sells, barter, exchanges, hires out, displays, exposes, offers or prepares for sale, barter, exchange or hire any goods or who provides or offers any service for reward as a street vendor, hawker or pedlar in a public road or in a public place, but does not include any person who sells newspapers only;

“**the Traffic Act**” means the National Road Traffic Act, 1996 (Act No. 93 of 1996); and

“**verge**” means a verge as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996).

### **Purpose of the By-law**

2.(1) The Council recognises the objective of its existence in terms the Constitution which includes –

- (a) to promote social and economic development;
- (b) to promote a safe and healthy environment; and
- (c) municipal planning, trading regulations, licensing and control of undertakings that sell food to the public, markets, public places, municipal roads and street trading.

(2) The Council therefore recognises the need to adopt a developmental approach to enable access to job and entrepreneurial opportunities within the informal trading sector, to harmonise the relationship between the informal trading sector and the formal trading sector and to facilitate the migration of the informal trading sector into the formal trading sector.



(3) The purpose of this By-law is to regulate the informal trading within the jurisdictional area of the Municipality in a manner that recognises and enhances the municipality's constitutional and other statutory obligations.

### **Forms of informal trading**

3.(1) Informal trading may include any of the following forms of trading –

- (a) street trading, which comprises the selling of goods or supply of services for reward in a public road;
- (b) selling of goods in linear market;
- (c) sale of goods or services in a public place
- (d) mobile trading such as from caravans, and light motor vehicles;
- (e) selling of goods in stalls or kiosks; and
- (f) selling of goods at special events

### **Freedom to engage in informal trading**

4. Subject to compliance with the provisions of this By-law, the Act and any other applicable law, any member of the community of the municipality may be permitted to engage in informal trading.

### **Designated areas**

5.(a) The Council may by resolution in terms of section 6A(3)(b) of the Act, set apart and demarcate stands or areas for the purposes of informal trading on any public road, the ownership or management of which is vested in the Council, or on any other property in the occupation and under the control of the Council.

(b) Any such stands or areas demarcated for informal trading may be extended, reduced or disestablished by resolution of the Council.

(c) The Council may, by resolution in terms of section 6A(3)(a) of the Act, lease any verge or any portion thereof to the owner or occupier of the contiguous land on condition that such owner or occupier will admit a specified number of informal traders in stands or places on such verge designated by the owner or occupier.

**Lease and allocation of stands**

6.(1) Any person who intends to carry on a business as an informal trader in terms of the provisions of this By-law may apply to the Council in the prescribed manner for the lease or allocating of a stand in terms of section 6A(3)(c) of the Act.

(2) The Council may grant subject to conditions, or refuse an application referred to in subsection (1).

(3) If such application is successful –

(a) an informal trader must enter into a lease agreement with the Council in respect of such stand, which lease agreement must be produced at the request of an Authorised Official;

(b) in respect of the allocation, as well as the lease of a stand, a token will be issued to an informal trader as proof of an informal trader's rights to occupy the stand for the purpose of conducting informal trading;

(c) an informal trader must, at all times while carrying on business on the stand or public space, retain such token on his/her person ready for display to an Authorised Official, if requested; and

(d) the Council may, on the written request of the informal trader issue a token to a bona fide employee of the informal trader.

(4) Any person who carries on informal trading on a stand or public place and who, without a reasonable explanation, is unable to produce a valid lease agreement or token as envisaged in subsection (3) above, will be guilty of an offence.

(5) Any person who carries on informal trading on a stand or public place and who, without a reasonable explanation, fails to comply with the terms of conditions of the lease agreement will be guilty of an offence.

**Environmental health and safety**

7.(1) An informal trader must –

(a) keep the area or site occupied by him or her for the purposes of conducting business in a clean and sanitary condition;

(b) keep his or her property in a clean, sanitary and well maintained condition;

(c) dispose of litter generated by his or her business in whatever refuse receptacle is provided by the Council for the public or at a dumping site of the Council;

- (d) not dispose of litter in a manhole, storm water drain or other place not intended for the disposal of litter;
- (e) ensure that on completion of business for the day, the area or site occupied by him or her for the purposes of conducting informal trading is free of litter;
- (f) take such precautions in the course of conducting his or her business as may be necessary to prevent the spilling onto a public road, or public place, or into a storm water drain, any fat, oil or grease;
- (g) ensure that no smoke, fumes or other substance, odours, or noise, emanating from his or her activities associated with informal trading causes pollution of any kind;
- (h) on request by an authorised official, move his or her property so as to permit the cleansing of the space or the area or site where he or she is conducting informal trading, or the effecting of municipal services.

### **Prohibition**

#### **8.(1) No street trader may carry on or undertake street trading –**

- (a) 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 national monument in terms of the National Monuments Act, 1969 (Act No. 28 of 1969);
- (b) on any verge contiguous to a building in which business is being carried on by any person who sells goods of the same nature as, or of similar nature to, goods being sold by the street trader or who offers services of the same nature as, or of a similar nature to, a service offered by the street trader concerned without the consent of such person;
- (c) on that half of a public road contiguous to a building used for residential purposes, if the owner or person in control or any occupier of the building objects thereto;
- (d) at any place where the carrying on of such business causes an obstruction to–
  - (i) the entrance to or exit from a building, or
  - (ii) a fire hydrant;
- (e) in any declared area identified as such in terms of section 6A(2) of the Act in respect of which the carrying on of the business of street trader has been –
  - (i) prohibited by the Municipality, or
  - (ii) restricted by the Municipality, unless such business is carried on in accordance with such restrictions;

- (f) at any place which has been set apart and demarcated as stands or areas by the Municipality in terms of section 6A(3)(b) of the Act for the purposes of the carrying on of the business of a street trader, unless such business is carried on in accordance with –
- (i) an agreement with the Municipality, or
  - (ii) the allocation by the Municipality to the street trader of any area or stand; and
- (g) in any public garden or park except with prior written consent of the Municipality.

(2) The Council may, by resolution in terms of section 6(A)(2) of the Act, declare any place in its area of jurisdiction to be an area in which informal trading is restricted or prohibited, and must, to enable compliance therewith, prescribe or make signs, markings or other devices indicating –

- (a) Specified places, goods or services in respect of which informal trading is restricted or prohibited;
- (b) the location of boundaries in respect of restricted or prohibited areas;
- (c) the boundaries of a stand or area set apart for the purposes of carrying on the business of informal trading;
- (d) the fact that any such stand or area has been let or otherwise allocated; and
- (e) any restriction or prohibition against informal trading in terms of the By-laws.

(3) The Council may display any such sign, marking or device in such a position and manner as will indicate any restriction or prohibition and the location or boundaries of the area or stand concerned.

(4) Any sign erected in terms of this By-law or any other law, will serve as sufficient notice to an informal trader of the prohibition or restriction in respect of the area concerned.

(5) The resolution of the Council will be subject to the provisions of section 6A(2)(b) to (j) of the Act, which require, *inter alia*, that the Council first consider the effect its resolution will have on the existing informal traders in the designated area in question.

(6) Any sign may be amended from time to time and displayed by the Council for the purpose of this By-law and will have the same effect as a road sign in terms of the Traffic Act.

### **Restrictions**

9.(1) No person engaging in street trading may –

- (a) sleep overnight at the business site;

- (b) erect any permanent structure in a public place or public road for the purpose of providing shelter, or
- (c) place or store any goods in such a manner or position as to constitute a danger to any person;
- (d) carry on such business in such a manner as to—
  - (i) create a nuisance;
  - (ii) damage or deface any public road or public place or any public or private property; or
  - (iii) create a traffic hazard;
- (e) obstruct access to a service or to service works of the Municipality or of the State or any statutory body;
- (f) interfere with the ability of persons using a sidewalk to view the goods displayed behind a shop display window or obscure such goods from view;
- (g) obstruct access to a pedestrian arcade or mall;
- (h) carry on such business in a place or area in contravention of any restriction imposed by a Municipal resolution in terms of section 6A(2)(a) of the Act;
- (i) place or store his or her goods on or in a building, without the consent of the owner, lawful occupier, or person in control of such building or property;
- (j) attach any of his or her goods by any means to the building structure, pavement, tree, parking meter, lamp, pole, electricity pole, telephone booth, post box, traffic sign, bench or any other street furniture in or a public road or public place;
- (k) make an open fire on a public road or public place;
- (l) interfere with the ability of a person using a sidewalk to view the goods displayed behind a shop display window, or obscure such goods from view;
- (m) obstruct access to a pedestrian crossing, a parking or loading bay or other facility for vehicular or pedestrian traffic; or
- (n) obstruct or inhibit the use of street furniture and any other facility designed for the use of the general public.

### **Display of goods**

**10.** A street trader must ensure that any structure, container, surface or other object used by him or her for the preparation, display, storage or transportation of goods –

- (a) is maintained in a good state of repair and in a clean and sanitary condition; and
- (b) is not so placed or stored so as to constitute a danger to any person.

**Removal and impoundment**

- 11.(1) An inspector may remove and impound any goods which he or she –
- (a) reasonably suspects are being used or intended to be used or have been used in or connection with the carrying on of the business of a street trader, and
  - (b) finds at a place where the carrying on of such business is prohibited or restricted in terms of this By-law, whether or not such goods are in the possession or under the control of any person at the time of such removal and impoundment.
- (2) An inspector removing and impounding any goods may –
- (a) except in the case of goods which appear to have been abandoned or in respect of which the owner or person having control thereof cannot be found, issue to the owner or person having control of such goods a receipt for the removal and impoundment thereof and stating –
    - (i) the place where the goods will be kept;
    - (ii) the amount payable in respect of expenses incurred by the Municipality in impounding and removing the goods; and
    - (iii) the date on or after which the goods will be sold or destroyed unless claimed;and
  - (b) forthwith place such goods in safe custody within the control of the Municipality.
- (3) Neither the Municipality nor any inspector, officer or employee of the Municipality will be liable for any loss, theft or damage to any goods removed and impounded in terms of this By-law.

**Disposal of impounded goods**

- 12(1) Any goods impounded in terms of this By-law must be dealt with as follows –
- (a) if the goods are claimed, the street trader must pay the expenses incurred by the Municipality for impoundment; and
  - (b) if the goods are not claimed within the period specified on the receipt issued in terms of this By-law, the goods must be sold to defray expenses incurred by the Municipality in impounding and removing the goods.
- (2) In the event that the goods –
- (a) are not capable of being sold, they must be destroyed after the time specified on the receipt issued in terms of this By-law; and

(b) are perishable, they may be sold or destroyed as soon as may be necessary.

(3) If the proceeds contemplated by this section are insufficient to pay for the expenses incurred by Municipality, the owner will be liable for any excess.

#### **Vicarious liability of persons carrying on informal trading**

**13.(a)** When an employee or agent of an informal trader contravenes a provision of this By-law, the informal trader will be deemed to have committed such contravention unless such informal trader satisfies the court that he or she took reasonable steps to prevent such contravention.

(b) The fact that the informal trader issued instructions to the employee or agent, prohibiting such contravention, will not in itself constitute sufficient proof of such reasonable steps.

#### **Offences and penalties**

**14.(1)** Whenever the Municipality is of the opinion that a person has not complied with the provisions of this section, it may serve a written notice on such person, calling upon him or her to comply with such provisions within a period specified in the notice.

(2) Any person who –

(a) contravenes or fails to comply with any provision of this By-law; or

(b) fails to comply with the terms of any notice served upon or given to him in terms of this By-law,

is guilty of an offence and is liable on conviction to a fine, or to imprisonment for a period not exceeding one year

#### **Policy**

**15.(1)** The Council may make policy regarding –

(a) the declaration of any place to be an area in which informal trading is restricted or prohibited and the prescription or making of signs, markings or other devices, as contemplated in this By-law;

(b) The setting apart and demarcation of stands or areas for the purposes of street trading and the extension, reduction or disestablishment therefrom as contemplated in terms of this By-law;

- (c) The disposal of any property which has been removed and impounded, as contemplated in this By-law;
- (d) The liability of any person for any reasonable expenses incurred in connection with such removal, impoundment and disposal;
- (e) The prescription of penalties for the offences contemplated in terms of this By-law;
- (f) The amendment of such penalties from time to time; and
- (g) Any matter which may be prescribed in terms of this By-law and any matter which may facilitate the application of this By-law.

(2)(a) The Council will not within one month before promulgating a policy in terms of subsection (1), cause a draft of the regulation to be communicated to the local community and to be made public in terms of sections 21 and 21A of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) together with a notice declaring the intention of the Council to issue such a regulation and inviting comments or representations.

(b) If the Council decides to alter the draft policy as a result of comments or representations received pursuant to such invitation, then it will not be necessary to communicate and make public the alteration before the amended draft is promulgated as a policy.

#### **Repeal of existing By-laws**

16. The Municipality's existing Street trading By-laws are hereby repealed.

#### **Short title**

17. This By-law will be called the \_\_\_\_\_ Municipality Street Trading By-Law, 20\_\_\_\_.



## CEMETERIES, CREMATORIA AND UNDERTAKERS BY- LAW

Be it enacted by the Council of the \_\_\_\_\_ Municipality, in terms of section 156(2) of the Constitution of the Republic of South Africa, 1996, read with section 11(3)(m) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), as follows:

### ARRANGEMENT OF SECTIONS

#### *Section*

1. Definitions
2. Establishment of cemeteries
3. Official hours
4. Register
5. Numbering of graves
6. Reservation of graves
7. Transfer of reserved rights
8. Number of corpses in a grave
9. Number of Corpses in a coffin
10. Application for a burial
11. Burial of a corpse
12. Indigent persons
13. Burial of ashes
14. Burial of a cadaver
15. Persons dying outside the municipal area
16. Grave measurements
17. Applications for cremation
18. Cremations
19. Coffins for cremation
20. Duties of proprietor
21. Council may establish sections in a cemetery
22. Monumental section
23. Berm section
24. Landscape section
25. Gardens of remembrance
26. Cremation and corpse reduction facility
27. Memorial square

28. Mausoleum
29. Surface grave units
30. Denominational section
31. Consent of the Council
32. Requirements for the erection of memorial work
33. Position, movement and removal of memorial work
34. Work and maintenance in respect of memorial work
35. Damaging of a memorial work
36. Vehicle and tools
37. Complying with directives of the Council
38. Times for bringing in material and doing work
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40. Production of written consent
41. Application for exhumation
42. Conditions of exhumations
43. Exhumation and reburial
44. Screening of exhumation
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47. Appointment of officer in charge
48. Children
49. Keeping to path
50. Prohibited conduct in a cemetery
51. Use and closure of a disused cemetery
52. Injuries and damages
53. Fire-arms and traditional weapons
54. Complaints
55. Charges
56. Rights on Graves
57. Consents, Notices and Orders
58. Notice of compliance and representations
59. Religious Ceremonies
60. Hearses and vehicles at Cemeteries
61. Exposure of Bodies
62. Instruction of Caretaker
63. Music Inside Cemetery
64. Interments Attended by large Numbers of People

65. Preparation of corpses
66. Application for issue of transfer certificate
67. Issue or transfer of certificate of competence
68. Validity and transfer of certificate of competence
69. Issue of provisional certificate of competence
70. Duties of Holder
71. Suspension or revocation of a certificate of competence or provisional certificate of competence
72. Requirements relating to funeral undertaker premises.
73. Conveyance of mortal remains
74. Hygiene
75. Appeal
76. Exemptions
77. Offences and Penalties
78. Repeal of existing By-laws
79. Short title and commencement

## CHAPTER 1 DEFINITIONS

### 1. Definitions

In this by-law, unless inconsistent with the context –

**"adequately ventilated and illuminated"** means adequately ventilated and illuminated as contemplated in the National Building Regulations and Standards Act, 1977 (Act No. 103 of 1977), as amended or the health bylaws applicable within the area of jurisdiction of the Council;

**"adult"** means a deceased person over the age of 12 years and any deceased person the dimensions of whose coffin cannot be accommodated in an excavation of 1,40m in length and 400 mm in width;

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

“**after-hours fee**” means a fee over and above the set norm of fee for burial or cremation outside normal week day cemetery operating hours, save in the case of cremations or burials which, because of religious belief, are undertaken after such hours, or in the case of burial, where the mourners undertake to close the grave;

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

“**ashes**” means the cremated remains of a body;

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

“**authorised official**” means an official of the Council authorised to implement and enforce the provisions of this By-law;

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

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

“**Births and Deaths Registration Act**” means the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992);

“**body**” means any dead human body, including the body of a stillborn child;

“**burial order**” means an order issued in terms of the Births and Deaths Registration Act;

“**burial**” means burial or inhumation into earth or any other form of burial and includes a tomb and any other mode of disposal of a body;

“**cemetery**” means any land or part thereof within the municipal area set aside by the Council or approved by the Council as a cemetery;

**"certificate of competence"** means a document contemplated in section 5 of this bylaw;

**"child"** means a deceased person who is not an adult;

**"Commonwealth war grave"** means any grave, tombstone, monument or memorial connected with a Commonwealth war burial in terms of the Commonwealth War Graves Act, 1992 (Act No. 8 of 1992);

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

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

**"Council"** means —

- (a) the \_\_\_\_\_ Municipality, exercising its legislative and executive authority through its municipal council;
- (b) its successor-in-title;
- (c) a structure or person exercising a delegated power or carrying out an instruction, where any power in this By-law has been delegated or sub-delegated, or an instruction given, as contemplated in section 59 of the Local Government: Municipal Systems Act; 2000 (Act No. 32 of 2000); and
- (d) a service provider fulfilling a responsibility under this By-law;

**"cremation"** means the process of disposing of a human body by fire;

**"crematorium"** the buildings in which the ceremony is conducted and the cremation carried out;

**"crematorium section"** means a section of a cemetery or crematorium set aside by the Council for the burial of ashes;

**"cremated remains"** means all recoverable ashes after the cremation process;

**"environmental health practitioner"** means a person who is an employee of Council, or contracted by Council and who is registered with the Health Professions Council of South Africa and is designated in terms the Health Act;

**"established practice"** means a practice in terms of which the owner or person in charge or his or her predecessor in title routinely gave permission to people residing on land to bury deceased members of their family on that land in accordance with their religion or cultural belief;

**"existing funeral undertaker's premise"** means existing funeral undertakers' premises, which are used as such, on the date of commencement of this By-law;

**"exhumation"** means the removal of a body from its grave;

**"family"** in relation to an occupier, and for the purposes of –

- (a) the definition of an "established practice";
- (b) section 10(2)(b)(ii); and
- (c) section 10(2)(c)(i)

means spouse or spouses, partner or partners, direct or adopted child or children, or grandchild or grandchildren, parent or parents, grandparent or grandparents, as well as dependent or dependents.

**"freeze reduction"** means the process whereby the corpse is disposed of by freeze drying;

**"funeral undertaker's premises"** means that premises that are or will be used for the preparation and or storage of corpses;

**"garden of remembrance"** means a section of a cemetery or crematorium set aside for the erection of memorial work, placing or scattering of ashes, but does not include a columbarium;

**"grave"** means any piece of land excavated for the burial of a body within a cemetery and includes the contents, headstone or other marker of such place and any other structure on or associated with such place;

**“grave of conflict”** means the grave of a person who died while defending the country;

**“hero”** means a person who performed a heroic act for the country and is given the status of a hero by the Council;

**“holder”** means the person in whose name a certificate of competence has been issued;

**“indigent person”** means a destitute person who has died in indigent circumstances, or if no relative or other person, welfare organisation or non governmental organisation can be found to bear the burial or cremation costs of such deceased person and includes a pauper;

**“indigent relief”** means assistance received for the burial or cremation of an indigent person;

**“in ground burial”** means when land is excavated for the interment of a body;

**“interment”** means to commit a corpse or ashes to its final resting place

**“land”**, for the purposes of –

(a) the definitions of –

(i) established practice;

(ii) occupier;

(ii) owner; and

(iv) person in charge; and

(b) sections 10(2)(b)(ii) and 10(2)(c)(i),

means land predominantly used for agricultural purposes;

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

**“Minister”** means that member of the Cabinet of the Province of KwaZulu-Natal whose portfolio includes the responsibility for cemeteries and crematoria;

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

**“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 wall”** means a wall in a cemetery or crematorium section provided for the placement of inscribed tablets commemorating deceased persons;

**“memorial work”** means any headstone, monument, plaque, or other work, or object, erected or intended to be erected in any cemetery or crematorium to commemorate a deceased person, and includes a kerb demarcating a grave, and a slab covering a grave;

**“monumental section”** means a grave section in a cemetery set aside for the erection of memorial work

**“multiple burial”** means subsequent interments in the remaining depth of the grave

**“municipal area”** means the area under the control and jurisdiction of the Council;

**“new funeral undertaker's premises”** means undertaker's premises that start operating as such after the date of commencement of this By-law;

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



**“niche”** means a compartment in a columbarium or garden of remembrance for the placing of ashes;

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

**“nuisance”** means any condition, thing, act or omission which is offensive or injurious to health or which tends to prejudice the safety, good order or health of the area or part thereof;

**“occupier”** means a person residing on land which belongs to another person and who has consent or another right in law to do so;

**“officer-in-charge”** means the person in the employ of the Council who, from time to time, is in control of any cemetery;

**“owner”** means the owner of land at the time of death contemplated in section 10(2)(b);

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

**“person in charge”** means a person who at the time of a death contemplated in section 10(2)(b) had or has a legal authority to give consent to a person to reside on the land in question;

**“preparation”** means any action aimed at the preparation of a corpse for a funeral or for cremation, export or other disposal and will include the embalming of such corpse for the said purpose, and

**“prepare”** and any work derived there from will have a corresponding meaning;

**“prescribed”** means prescribed by the Council;

**“prescribed fee”** means a fee determined by the Council by resolution of that Council or its successor.

**“private cemetery”** means land which is used as a cemetery but not owned by the Council

**“private crematorium”** means a building where deceased persons are cremated but is not owned or managed by the Council

**“provisional certificate of competence”** means a document as referred to in section 68;

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

**“pure water”** means clean and clear water that contains no Escherichia coli organisms and is free from any substance in concentrations that are detrimental to human health;

**“reduction burial”** refers to the making of a grave available for a subsequent interment after a specific period;

**“rodent-proof”** means rodent-proof as laid down in the regulations regarding the Prevention of Rodent Infestation and the Storage of Grain, Forage, etc. in Urban and Rural areas of the Republic of South Africa promulgated by Government Notice R. 1411 of 23 September 1966

**“South African Heritage Resources Agency”** means the South African Heritage Resources Agency, established in terms of section 11 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999)

**“stone mason”** means a person carrying on business as a stone mason;

**“the Act”** means the Health Act, 2003 (Act No. 61 of 2003), and any expression to which a meaning has been assigned in the Act will have such meaning and, unless the context otherwise indicates; and

**“thermometer”** means an apparatus which can give the temperature readings referred to in the bylaws, the combined accuracy of such a thermometer and its temperature – sensitive sensor being approximately 0,5°C.

“**victim of conflict**” means a person defined in section 1 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999).

## **CHAPTER 2 ESTABLISHMENT AND MANAGEMENT OF CEMETERIES**

### **Establishment of cemeteries**

2. The Council may from time to time set aside and reserve suitable municipal land within the municipality for the establishment and management of a cemetery. The Council may consider and approve an application for the establishment and management of a cemetery. The Council may consider and approve an application for the establishment and maintaining of a private cemetery or a private columbarium on private land on the conditions that the Council may deem necessary.

### **Official hours**

3.(a) The cemetery and the office of the caretaker will be open during the hours as determined by the Council. The cemetery office of the caretaker will be open from Monday to Friday.

(b) Burials will take place on the days and during the hours as determined by the Council.

(c) The Council has the right to close a cemetery or any portion thereof to the public for such periods and for such reasons as the Council may deem fit

(d) No person must be or remain in a cemetery or part thereof before or after the official hours as determined by the Council or during any period when it is closed for the public, without the permission of the caretaker.

(e) The Council may, if the case is one of emergency or the custom or conventions of a religious or cultural group, permit internment outside the times contemplated in subsection.

### **Register**

4.(a) A register of graves and burials must be kept by the caretaker.

(b) Such register must be completed as far as possible immediately after a burial has taken place, with reference to the prescribed particulars contained in the burial order concerned.

**Numbering of graves**

5.(a) All graves in a cemetery that are occupied or for which a burial has been authorised in terms of the provisions of this by-law must be numbered by the Council.

(b) The number must be affixed to the grave and indicated on a plan to be kept available in the caretaker's office.

**Reservation of graves**

6.(a) No reservation of a grave in a cemetery will be allowed.

(b) Reservation of graves made and recorded in the official records of the Council in terms of any previous by-laws will still be valid and the Council must honour such reserved rights.

**Transfer of reserved rights**

7.(a) A reserved right as contemplated in section 6(b) may not be transferred without the prior approval of the Council.

(b) Application to transfer such right must be made to the caretaker in writing by completing and submitting a prescribed application form.

(c) If the application is granted, a certificate will be issued in favour of the transferee who will become the holder.

(d) The reserved right may be cancelled on request of the holder and if the request is approved by the Council, the amount paid by the holder (if any) minus 10% administration fees, will be refunded to the holder.

**Number of corpses in a grave**

8.(a) Only one corpse may be buried in a grave with measurements as contemplated in this by-law.

(b) Only two corpses may be buried in a grave with measurements as set out in sub-section 16(d): Provided that application for the burial of two corpses has been made to the caretaker in writing by completing and submitting the required application form before the first corpse is buried.

(c) After the re-opening of a grave for the purpose of the burial of a second corpse as mentioned in sub-section 9(b) in that grave, a concrete layer of not less than 25 mm thick must be cast above the coffin previously buried.

(d) If on re-opening any grave, the soil is found by the Medical Officer of Health to be offensive or dangerous to the general health of people, the situation will be handled in consultation with the Medical Officer of Health.

#### **Number of Corpses in a coffin**

9.(a) A deceased stillborn child and his or her deceased mother may be buried in the same coffin at the fee for a single interment of an adult.

(b) Still-born twin babies may be buried in the same coffin at the fee for a single interment of a stillborn child.

(c) Subject to subsection (a) and (b), only one corpse may be contained in a coffin, unless this is contrary to the tradition, customs or religious beliefs of the deceased person or the next of kin, or where there is no next of kin any other closest family member.

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

### **CHAPTER 3 BURIALS**

#### **Application for a burial**

10.(1) Application for permission for a burial in a cemetery must be made to the caretaker in writing by completing and submitting a prescribed application form. An application must be accompanied by –

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

(b) the prescribed fees; and

(c) a reservation certificate, if applicable;

(d) the death certificate of the corpse

(e) an affidavit by the next of kin of the deceased, or where not applicable, other close relative, consenting to the disposal of the corpse when such corpse is to be buried in the manner requested;

(f) in the instance where a person was suffering from a notifiable disease, this must be indicated in the application; and

(g) details of cultural or religious practices that need to be adhered to.

(2)(a) No person may, subject to section 10(2)(b), without the prior written approval of the Council, execute, cause, or allow a burial or cremation in any other place in the municipality than in a cemetery or crematorium established and managed by the Council.

(b) An occupier may –

- (i) be buried on the land on which he or she resided at the time of his or her death; and
- (ii) bury a member of his or her family on the land on which the occupier resides.

(c) A burial contemplated in section 10(2)(b) may take place –

- (i) after notification to the owner or person in charge by the occupier or his or her family members; and
- (ii) if an established practice exists in respect of the land on which the occupier resides.

(3) An application for permission for a burial must be submitted to the caretaker at least 24 working hours prior to the planned burial, failing which the caretaker may refuse the application.

(4) No person may execute a burial or cause or allow a burial to be executed in a cemetery, unless written permission for the burial has been obtained, a specific grave has been allocated for the purpose of the burial and a date, and time for the burial has been arranged with the caretaker.

(5) In allocating a date and time for a burial, the caretaker must have regard to the customs of the deceased's relatives and their religion or church affiliation.

(6) In allocating a grave the caretaker will as far as possible allow the responsible person access to a plan of the cemetery showing the various sections, and allow him or her to select the section of his or her choice, but not the individual grave of his or her choice. The allocation of a specific grave is the sole responsibility and discretion of the caretaker and a burial will be executed only in a grave allocated by him or her.

(7) The Council may allow in its discretion a burial without payment of the prescribed fees in a part of a cemetery set aside for such purposes and in such manner as it may deem fit.

(8) Notice of cancellation or postponement of a burial must be submitted to the caretaker at least 4 working hours before the time set for the burial.

(9) The granting of permission for a burial and the allocation of a specific grave in a cemetery, does not give the applicant, the responsible person or any other person any right in respect of such grave other than to bury a corpse in the grave.

(10) Except with the permission of the Council, no person may place or cause any coffin constructed of any material other than natural wood or other perishable material to be placed in any grave.

(11) The Council reserves the right to inspect the contents of a coffin before interment, in the event of there being any irregularities in the paperwork.

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

#### **Burial of a corpse**

11.(a) All graves must be, subject to section 10(2) provided by the caretaker with the exception of brick-lined or concrete-lined graves, in which cases the brickwork or concrete work must be carried out by the undertaker under the supervision of the caretaker and in conformity with the specifications applicable to ordinary graves.

(b) There must be at least 1200 mm of soil between the top of an adult coffin and the ground surface, and at least 900 mm of soil between the top of a child coffin and the ground surface.

(c) All corpses must be placed in a coffin for the burial thereof, except as provided for the Muslim community.

(d) No person may without the prior permission of the caretaker conduct any religious ceremony or service according to the rites of one denomination in any portion of a cemetery reserved by the Council in terms of the provisions of this by-law, for the use of some other denomination.

(e) No person may permit any hearse in a cemetery to leave the roads provided, and every hearse must leave the cemetery as soon as possible after the funeral for which it was engaged.

(f) Every person taking part in any funeral procession or ceremony must comply with the directions of the caretaker as to the route to be taken within the cemetery.

(g) No person may convey or expose a corpse or any part thereof in an unseemly manner in any street, cemetery or public space.

- (h) Every application and every document relating to any burial must be marked with a number corresponding to the number in the register referred to in section 4 and must be filed and preserved by the Council for a period of not less than ten years.
- (i) Every coffin or body upon being placed in any grave must, at once, be covered with 500 mm of earth.
- (j) No person may disturb any human remains or any soil adjacent thereto in any cemetery, except where such disturbance is expressly permitted by this bylaw or by an order of court.
- (k) On completion of interment, the person referred to in subsection (a) or persons who dug the grave must clear the surrounding areas including pathways and graves of all soil, debris and other matter or material exposed by the digging of the grave.
- (l) The person who arranged the interment must take all reasonable steps to ensure that no damage occurs to surrounding property during the interment ceremony, including any collapse of grave walls and take steps to prevent such collapse.
- (m) The Council has the right to flatten any area on, or surrounding any grave including the grave mound three months after the burial has taken place.

### **Indigent persons**

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

### **Burial of ashes**

**13.(1)** Ashes may be buried in a coffin and only two such coffins containing ashes may be buried in an extra deep grave; provided that a coffin does not exceed the average body weight of 70 kg, and further-more that the grave is re-adjusted to the prescribed depth and measurements.

(2) No person may execute a burial or cause a burial of ashes to be executed in a cemetery, unless written permission for the burial has been obtained, a specific grave or niche has been allocated for the purposes of the burial and a date, and time for the burial has been arranged with the caretaker.

(3) Application for the burial of ashes for definite periods or in perpetuity, or for the provision of memorial tablets of approved material to be fixed on the building, columbarium or other facility must be made to the caretaker in writing by completing and submitting a prescribed application form.



(4) Niches will be allocated by the caretaker strictly in the order in which the applications therefore are received and no reservations for future use will be made.

(5) An application for permission for a burial must be submitted at least 24 working hours prior to the planned burial, failing which the caretaker may refuse the application.

(6) An urn or casket containing ashes that has been deposited in a building, columbarium, or other facility must not be removed without the caretaker's prior written consent.

(7) Every niche containing ashes must be sealed by a tablet approved by the Council and may only be opened for the purpose of withdrawing an urn or casket contained therein for disposal elsewhere, or for the purpose of depositing an additional urn or casket therein where after it will once again be sealed.

(8) Application for the opening of a niche must be made to the caretaker in writing by completing and submitting a prescribed application form.

(9) No person may introduce any material into the columbarium for the purpose of constructing or erecting any memorial work therein unless and until:

(a) approval for the burial has been obtained from Council;

(b) approval for the erection of the memorial work has been obtained from Council;  
and

(c) the prescribed fees have been paid which will be determined by Council from time to time.

(10) Any person engaged upon any work on the columbarium, must execute such work to the satisfaction of the caretaker, and such work must be undertaken during the official office hours of the cemetery.

(11) No permanent wreaths, sprays, flowers, or floral tributes may be placed in or on a columbarium.

(12) The columbarium may be visited daily during the official cemetery hours as determined by Council.

(13) Plaques must be made of material approved by the Council and must be affixed simultaneously with the placing of the ashes and within 30 days of the obtaining of the consent.

#### **Burial of a cadaver**

14. The remains of a corpse used at an educational institution for the education of students, generally known as a cadaver, may be buried in one coffin and two such coffins containing cadavers may be buried in an extra deep grave as contemplated in sub-section 16(d): Provided that a coffin does not exceed the average body weight of 70 kg, and furthermore that the grave is re-adjusted to the prescribed depth and measurements.

#### **Persons dying outside the municipal area**

15. The provisions of this By-law will apply *mutatis mutandis* to any burial in a cemetery of a person who has died outside the municipality

#### **16. Grave measurements**

(a) The excavation of a grave for an adult must be at least 1820 mm deep, 2300 mm long, and 760 mm wide.

(b) The excavation of a grave for a child must be at least 1400 mm deep, 1520 mm long, and 610 mm wide.

(c) In the event that a grave of a greater depth, length or width than those specified above is required, application in respect thereof, together with extra prescribed fees that are due, must be made to the caretaker together with the application to obtain permission for a burial.

(d) The excavation of an extra deep grave for the burial of two corpses must be at least 2400 mm deep 2300 mm long and 760 mm wide.

(e) Deviations from measurements of graves must be as follows:

Extra wide	: 2300 mm long
	: 840 mm wide
Extra long	: 2530 mm long
	: 760 mm wide
Rectangular small	: 2300 mm long
	: 900 mm wide
Brick-nogging	: 2600 mm long
	: 1050 mm wide

- (f) The area of a rectangular grave for an adult must be 1500 mm wide by 2600 mm long.
- (g) The area of a grave for an adult must be 1210 mm wide by 2430 mm long.
- (h) The area of a grave for a child must be 1210 mm wide by 1520 mm long. If a coffin is too large, an adult grave must be used.

## **CHAPTER 4 CREMATIONS**

### **Applications for Cremation**

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

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

- (a) Complying with applicable legislation;
- (b) Obtaining approval from the Council; and
- (c) Complying with the conditions as determined by the Council.

### **Cremations**

18.(a) Where a member of the public desires to be present at a cremation, a request for such member to be present must be made to the Council, which will consider the request as it deems fit.

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

(c) A crematorium must be fitted with equipment in order to prevent the dispersion of ash into the atmosphere

### **Coffins for cremation**

19.(a) When cremated a corpse must be contained within a coffin.

(b) A coffin in which a corpse is cremated must be made of wood or other non-toxic material.

(c) Non-toxic varnish, paint or glue must be utilised in the manufacturing of the coffin in which a corpse is cremated.

(d) When cremated, a coffin may only contain combustible material, including clothing, shoes and other adornments of whatsoever nature, and the Council will have the right to remove non-combustible material from the coffin.

(e) Before a cremation is permitted to take place, the applicant or his or her representative will be obliged to produce a certificate certifying that the coffin complies with subsections (b) and (c) above.

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

## CHAPTER 5 PRIVATE CEMETERIES AND CREMATORIA

### **Duties of proprietors**

20.(1) The proprietor of a private cemetery or crematoria for which the consent of the Council has been obtained must –

(a) comply with –

(i) any special conditions which may be determined by the Council in respect of private cemeteries and crematoria from time to time; and

(ii) the relevant provisions of this By-law and any other applicable law;

(b) maintain the grounds, fences, gates, roads, paths and drains in good order and condition and clear of weeds and overgrowth;

(c) allow an authorised official of the Council to enter or inspect the cemetery or crematoria and all records kept in connection therewith; and

(d) appoint a suitably qualified person to manage the cemetery and to keep the records.

(2) The owner of a private cemetery, a private crematorium, or private property may on reasonable grounds, refuse permission to have a corpse interred or cremated in the cemetery or crematorium.

## CHAPTER 6 SECTIONS IN A CEMETERY

### **The Council may establish sections in a cemetery**

**21.** The Council may establish one or more of the following sections in its cemeteries:

- (a) Monumental section
- (b) Berm section
- (c) Landscape section
- (d) Memorial square
- (e) Garden of remembrance
- (f) Crematoria or corpse reduction facility
- (g) Mausolea
- (h) Surface grave units
- (i) Denominational section

### **Monumental section**

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

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

(c) Flowers, foliage, wreaths or any adornment may be placed upon the berm only of graves, except in the case of graves which have not yet been levelled.

### **Berm section**

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

(b) Headstones may contain two receptacles for flowers.

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

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

(e) Flowers, foliage, wreaths or any adornment may be placed upon the berm only of graves, except in the case of graves which have not yet been levelled.

**Landscape section**

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

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

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

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

**Gardens of remembrance**

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

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

**Crematorium and corpse reduction facility**

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

**Memorial Square**

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

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

**Mausolea**

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

**Surface grave units**

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

**Denominational section**

30.(a) The Council may set aside denominational sections in its cemeteries for the exclusive use of a specific faith, religious or cultural group where the burial requirements of such group dictates a physical arrangement of graves with reference to orientation, density and depth other than be the norm.

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

**CHAPTER 7****ERECTION AND MAINTENANCE OF MEMORIAL WORK AND CARE OF GRAVES****Consent of the Council**

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

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

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

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

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

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

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

**Requirements for the erection of memorial work**

**32.** A person erecting a memorial work must comply with the following –

- (a) proceedings must be of such a nature that no damage may be caused to any structure or offence given;
- (b) with the applicants permission, the name of the maker or manufacturer can be displayed on a memorial work, but no address or any particulars may be added thereto, and the space utilised for it may not be larger than 40 x 100 mm;
- (c) all unused material after the completion of the work must be removed and the adjoining areas must be left neat and clean; and
- (d) any damage caused must be repaired at the cost of the person responsible for such damage and should the responsible person fail to affect such repair, after due notice, the Council may undertake the remedial work at the cost of the person who erected the memorial work.

**Position, movement and removal of memorial work**

**33.(a)** No person may erect a memorial work on a grave before the position in which such memorial work is to be placed has been indicated in terms of an approved plan.

(b) Should the condition referred to in subsection (a), the Council may on written notice to such person, alter the position of the memorial work and recover the costs of the alteration from the person who erected the remedial work.

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

**Work and maintenance in respect of memorial work**

**34.(a)** Any person engaged in any work, must effect such work under the supervision of the Council.

(b) Should the person who erected a memorial work allow such memorial work to fall into such a state of disrepair that it may cause danger or deface the cemetery, the Council may serve a notice of compliance on such a person.



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

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

#### **Damaging of a memorial work**

**35.** The Council is not responsible for any damage that may occur to a memorial work that is not due to the negligence of the authorised officials of the Council.

#### **Vehicle and tools**

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

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

#### **Complying with the directives of the Council**

**37.** A person carrying out work within a cemetery must in all respects comply with the directives of the Council.

#### **Times for bringing in material and doing work**

**38.(a)** No person may bring memorial work or material in connection therewith, or do any work other than the dismantling of memorial work for the interment purposes within a cemetery except during the times determined by the Council.

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

**Subsiding soil conditions**

39. The Council is not liable for damage to memorial work resulting from any subsiding soil.

**Production of written consent**

40.(1) A person charged with performing work or on his or her way to or from work within a cemetery must upon demand from the Council or its authorised official, produce the written consent issued to him or her.

**CHAPTER 8****RE - OPENING OF GRAVES AND EXHUMATIONS****Application for exhumation**

41. An application for exhumation must be submitted to the Council and must include the following –

- (a) the completed application form;
- (b) a copy of the death certificate; and
- (c) a letter or affidavit from the next of kin of the deceased consenting to the exhumation.

**Conditions of exhumations**

42.(1) No person may exhume or cause to be exhumed a body without the written consent of the –

- (a) Minister;
- (b) the Council;
- (c) the provincial Department of Health;
- (d) the Administrator of cemeteries;
- (e) the Council's Medical Officer of Health or
- (f) by an order of a court having jurisdiction over such matters.

(2) Whenever an exhumation is to take place, the officer-in-charge must inform the Provincial Commissioner of the South African Police Services.

(3) A member of the South African Police Services must always be present when an exhumation is being conducted.

- (4) The written consent referred to in subsection (1) must be submitted to the environmental health practitioner at least five working days prior to the approved exhumation date.
- (5) The environmental health practitioner may impose conditions with respect to the exhumation and the exhumation may only proceed when such conditions have complied with.
- (4) An exhumation must not take place when the cemetery is open to the public and must take place under the supervision of the officer-in-charge.
- (5) If remains are to be exhumed from any grave, only the undertaker under the supervision of the officer-in-charge, may cause the grave to be excavated for such exhumation;
- (6)(a) If a grave is to be excavated for exhumation, the officer-in-charge must be given 48 hours written notice before the time of exhumation, and
- (b) The authority referred to in paragraph (1)(d) of this Section and the prescribed fee must accompany such notice.
- (7) A person who wishes to exhume the remains of an indigent person must pay the costs incurred by the Council at the time of burial, to the Administrator of Cemeteries.
- (8) The person carrying out the exhumation must ensure that the body and grave are properly disinfected and deodorized.
- (9) The remains of the deceased person must, pending reburial or cremation be kept at a registered funeral undertakers premises.
- (11) The person carrying out the exhumation must provide a suitable receptacle for each body or remains.
- (12) The South African Police Services must –
- (a) if there is proof of illegal burial immediately exhume the body; and
  - (b) take it to a government mortuary for investigation.
- (13) A grave of victims of conflict and a grave which is older than 60 years may only be exhumed with the permission of the South African Heritage Resources Agency.

(14) A Commonwealth war grave may only be exhumed in accordance with the provisions of section 3 of the Commonwealth War Graves Act, 1992.

#### **Exhumation and reburial**

43.(1) The Council may, if a body has been buried in contravention of this By-law, cause the body to be exhumed and re-buried in another grave.

(2) The relatives of the deceased must be –

- (a) notified of the intended exhumation and re-burial; and
- (b) allowed to attend.

#### **Screening of exhumation**

44. A grave from which a body is to be exhumed must be screened from the view of the public during the exhumation.

#### **Emergency exhumations**

45. No body may be exhumed less than eighteen months after burial, other than in compliance with a court order.

#### **Reduction burial**

46.(1) The Council may, after a lapse of a minimum period of 10 years after the most recent burial in a grave, exhume the remains of a corpse for the purposes of the reduction of the corpse and rebury the remains of that corpse in the same grave, in a smaller coffin, or at a greater depth subject to the conditions that –

- (a) any holders of private rights in that grave and the next of kin or closest surviving relative of the deceased have given their consent.
- (b) in respect of any grave where no private rights have been acquired, where the next of kin, or the closest surviving relative have given their consent

## CHAPTER 9 THE ADMINISTRATION AND CONTROL OF CEMETERIES

### **Appointment of an officer in charge**

47.(a) The Council must appoint an officer in charge for each cemetery to control and administer the cemetery

(b) The officer in charge must take into account the customs of the deceased person and the persons responsible for the interment and must accommodate these within the framework of this By-law.

### **Children**

48. No child under 12 years of age may enter a cemetery unless he or she is under the supervision and care of a responsible adult person.

### **Keeping to path**

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

### **Prohibited conduct within a cemetery**

50.(1) No person may –

(a) commit or cause a nuisance within a cemetery

(b) ride an animal, cycle, or skateboard for recreational purposes or partake in any other form of recreational or sporting activity within any cemetery, unless otherwise determined by the Council.

(c) with the exception of a blind person, bring into or allow an animal to wander inside any cemetery, provided that dogs on leashes will be permitted unless otherwise determined by the Council;

(d) plant, cut, pick or remove a tree, plant, shrub or flower without the permission of the Council;

(e) hold or take part in a protest in any cemetery

(f) interrupt or disrupt –

(i) the performance of duties of an authorised official or workman employed by the Council

(ii) a funeral undertaken in a cemetery

(g) obstruct, resist or oppose the officer in charge on the course of his or her duty, or refuse to comply with an order or request which the officer in charge is entitled under this By-law to make;

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

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

(3) The Council may impound an animal found in any cemetery.

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

## CHAPTER 10 USE AND CLOSURE OF DISUSED CEMETERIES

### **Use and closure of disused cemeteries**

51.(a) Despite any provision of this By-law, and subject to the provisions of subsection (f) the Council may use any cemetery or portion thereof, of which it is the cemetery authority, which has been disused for a period of not less than 20 years for such a purpose as will not desecrate the ground and any human remains or any memorials in such a cemetery.

(b) Despite any provision of this By-law, and subject to the provisions of subsection (f), the Council may close any cemetery or any part thereof, of which it is the cemetery authority, which has been disused for a period of not less than 20 years, or if good closure for such closure exists.

(c) Despite any provision in this By-law, and subject to the provisions of subsection (f), the Council may use a cemetery or portion thereof, which has been used for another purpose in terms of subsection (a), or reopen any cemetery or portion thereof, which has been closed in terms of subsection (b).

(d) The Council may, subject to the provisions of subsection (f), remove to another cemetery the human remains, memorials and other structures from a cemetery of which it is the cemetery authority, which has been closed or disused for a period of not less than 20 years and which has been approved for other usage by the competent authority or authorities as the case may be.

(e) All rights possessed or enjoyed by any person in respect of a cemetery contemplated in subsection (a) and (b) will thereupon cease.

(f) Before acting in terms of subsection (a), (b), (c) and (d) the Council must give notice of its intention to do so.

## CHAPTER 11 MISCELLANEOUS

### **Injuries and damages**

52.(a) A person using a cemetery do so at his own risk, and the Council accepts no liability whatsoever for any personal injuries sustained by such person or for any loss of or damage to such person's property relating to or resulting from the aforementioned usage of the cemetery.

(b) A person using a cemetery accepts full responsibility for any incident, damages or injuries that may be caused by or that may result from the aforementioned use of the cemetery and he or she accordingly indemnifies the Council, its members, employees or agents, whether in personal or official capacity, against liability for all claims from whichever nature by himself, his or her dependants or third parties in respect of any patrimonial loss, consequential damages, injuries or personal prejudice that may be suffered or sustained in connection with or resulting from such a person's use of a cemetery. The aforementioned indemnity also applies to injuries sustained by employees of the Council while on duty at the cemetery, as well as damages to Council property at the cemetery.

#### **Fire-arms and traditional weapons**

**53.** No fire-arms and traditional weapons may be allowed in a cemetery.

#### **Complaints**

**54.** Any person wishing to lodge a complaint must lodge such complaint, in writing with the Director.

#### **Charges**

**55.** The charges set forth in the tariff in respect of the various items therein contained, must be paid to the Council in advance.

#### **Rights on Graves**

**56.** No person may acquire any right to or interest in any ground or grave in any cemetery.

#### **Consents, Notices and Orders**

**57.** Any written consent, notice or other order issued by the Council in terms of this By-law, with the exception of consent by the Director or any officer authorised by him and will be prima force evidence of the contents of such a signed consent, notice or other order.

#### **Notice of compliance and representations**

**58.(1)** A notice of compliance must state –



- (a) the name, residential and postal of the address of the person;
- (b) the nature of the state of disrepair;
- (c) sufficient detail to enable compliance with the notice, the measures required to remedy the memorial work;
- (d) that the person must, within a specific 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 subsection (d) is an offence; and
- (f) that written representations, as contemplated in subsection (3) may within the time period stipulated in subsection (d) , be made to the Council at a specified place.

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

- (a) the principles and objectives of this By-law;
- (b) the cause and state of disrepair;
- (c) any measures proposed by the person by the person on whom measures are to be imposed; and
- (d) any other relevant factors.

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

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

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

(6) The Council may, on its own volition, conduct any further investigations to verify the facts 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) The Council must, after consideration of the representations and responses, make an order in writing and serve a copy of it on the person.

(8) The order must –

- (a) set out the findings of the 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 the Council.

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

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

### **Religious Ceremonies**

59.(a) The members of any religious denomination may conduct religious ceremonies in connection with any interment of memorial service subject to the control and by-laws of the Council.

(b) No animal may be slaughtered on the premises of the cemetery regardless of any religious ceremony which may require an animal to be slaughtered.

### **Hearses and vehicles at Cemeteries**

60.(a) No person may cause any hearse or vehicle, as defined by the National Road Traffic Act, 1996 (Act No. 93 of 1996) while within a cemetery to depart from the road.

(b) Every hearse or vehicle must leave the cemetery by the route indicated by the caretaker.

(c) The cemetery is a public place and all laws applicable to the driving of a vehicle and the use of a public road will be applicable inside the premises of the cemetery.

### **Exposure of Bodies**

61. No person may convey a dead body, which is not covered, or whose any such body or any part thereof in any street, cemetery or public place.

**Instruction of Caretaker**

62. Every person taking part in any funeral procession or ceremony must comply with the directions of the caretaker while such person is within a cemetery.

**Music Inside Cemetery**

63. Only sacred singing will be allowed in any cemetery, except in the case of police and military funerals.

**Interments Attended by large Numbers of People**

64. In any case where it is probable that an unusually large number of persons will be present at any interment, the person giving notice of such interment must notify the caretaker the day before the funeral.

**CHAPTER 12  
UNDERTAKERS****Preparation of corpses**

65.(a) Corpses to be prepared only at funeral undertaker's premises in respect of which a certificate of competence has been issued

(b) Unless otherwise provided for in this bylaw, no person may prepare and/or store any corpse except on a funeral undertaker's premises in respect of which a certificate of competence has been issued and is in effect.

**Application for the issue or transfer of a certificate of competence**

66.(1)(a) Any person wishing to apply for a certificate of competence in respect of new funeral undertaker's premises will, not less than 21 days before submitting his application to the Council cause a notice of his intention to be published in English, and two other official South African languages in a newspaper that circulates in the area in which such premises will be or is situated.

(b) Such notice must contain information to the effect that an application for the issue of a certificate of competence in terms of this By-law is to be submitted to the Council and that any person who wishes to object to such use may lodge his or her objection,

together with substantiated representations, with the Council in writing within 21 days of the date of publication of such notice.

(2) An application for the issue of a certificate of competence must be made to the Council in writing on the prescribed form and must be accompanied by –

- (a) a description of the premises and the location thereof; including equipment, storage facilities, preparation areas and toilet facilities.
- (b) a complete ground plan of the proposed construction or of existing buildings on a scale of 1:100 including the effluent disposal system
- (c) a plan of the premises on which north is shown indicating adjacent premises already occupied by the applicant or other persons and the purpose for which such premises are being utilized or are to be utilized;
- (d) Particulars of any person other than the applicant or any of his or her employees who prepares or will prepare corpses on the premises;
- (e) a contingency plan for the storage of corpses in the event of a refrigeration or cold room breakdown; and
- (f) a cleansing and disinfection programme.
- (g) details of registered health care waste remover, transporter and disposer

(3) The Council, when considering issuing a certificate of competence, may request from the applicant or any other person any such further information required.

(4) The Council will not issue or transfer a certificate of competence unless a complete inspection of the premises concerned has been carried out by an environmental health practitioner appointed by the Council and the environmental health practitioner's report on such inspection, including recommendation on such issue or transfer, is in possession of the Council.

#### **Issue or transfer of certificate of competence**

67. When the Council is satisfied that the premises concerned –

- (a) complies with all requirements laid down in this By-law and any other applicable legislation;
- (b) are in all respects suitable for the preparation of corpses; and
- (c) will not be offensive to any occupants of premises in the immediate vicinity of such premises, it will, on conditions as it may determine in respect of the funeral undertaker's premises concerned, issue a certificate of competence in the name of the

applicant in such form as it may determine or will, by endorsement, transfer an existing certificate of competence to a new holder, as the case may be.

#### **Validity and transfer of certificate of competence**

**68.** A certificate of competence, excluding a provisional certificate of competence, is, on endorsement by the Council, be transferable from one holder to a new holder and such certificate is, if so endorsed, be valid from the date of which it was issued until it is revoked or suspended in terms of this bylaw.

#### **Issue of provisional certificate of competence**

**69.(a)** Notwithstanding the fact that the Council is not satisfied as contemplated in section 4 with regard to funeral undertaker's premises in respect of which a certificate of competence has been applied for, the Council may, in the case of existing funeral undertaker's premises and subject to such conditions as Council may determine, issue a provisional certificate of competence in respect of such premises.

(b) A certificate referred to in subsection (a) will only be issued if the Council is satisfied that the use of such funeral undertaker's premises does not and will not create a nuisance, and will be issued for a maximum period of six months to enable the applicant to alter such premises in order to comply with the provisions of this By-law.

(c) If, after the period referred to in subsection (b), the premises does not comply with the provisions of this By-law, the Council may revoke the provisional certificate of competence.

#### **Duties of holder**

**70.(a)** The holder must immediately inform the Council in writing if there are any changes in the particulars or circumstances supplied to the Council in the application for certificate of competence.

(b) A funeral undertaker must not dispose of a body in any place or premises other than a cemetery or crematoria registered in terms of the KwaZulu-Natal Cemeteries and Crematoria Act, 1996 (Act No. of 1996).

(c) The holder must comply with the provisions of this By-law, applicable legislation and any conditions imposed by the Council.

**Suspension or revocation of a certificate of competence or provisional certificate of competence**

71.(1) If the Council is of the opinion, on the strength of an inspection report and/or recommendation by a medical officer of health or environmental health practitioner, that there are reasonable grounds to suspect that –

(a) the funeral undertaker's premises concerned are utilized in such a way as to create a nuisance or that conditions constituting a nuisance have been or are being created on the funeral undertaker's premises concerned; or

(b) the premises concerned are utilized in contravention of the provisions of the Health Act, 2003 (Act No. 61 of 2003), this bylaw or other applicable legislation or any conditions imposed by the certificate of competence or provisional certificate of competence, the Council may in its discretion –

(i) revoke certificate of competence or provisional certificate of competent concerned;

(ii) suspend the certificate of competence or provisional certificate of competence concerned for such period as the Council may determine, to enable the holder to comply with the applicable legislation and/or conditions imposed; provided that if the holder fails to comply within the period stipulated in the notice of suspension, the Council may revoke the relevant certificate without further notice.

(2) A notice issued by the Council in terms of section 71(b)(ii) must be issued in writing, and then served on the holder.

(3) The suspension or revocation of a certificate of competence or provisional certificate of competence in terms of this bylaw will have the effect that, from the date of the notice of suspension or revocation –

(a) no preparation of any corpse must be performed on the premises concerned;

(b) no corpse must be received for preparation on the premises concerned; and

(c) no corpse must be preserved on the premises concerned and every corpse must immediately be removed to a mortuary under the control of the State, a provincial administration or the Councillor any other funeral undertaker's premises, provided that this bylaw will not be applicable and the said notice must not be so construed as to restrict any other business activity relating to the funeral undertaking profession including the sale of coffins and policies.

(4) Where the Council is of the opinion that a condition that gave rise to the revocation of a certificate as contemplated in this bylaw was corrected after such revocation, it may, on

written application made by or on behalf of the holder, repeal such revocation by endorsement on the certificate concerned.

### **Requirements relating to funeral undertaker's premises**

**72.(1)** Provision for the following must be made on a funeral undertaker's premises -

- (a) a preparation room for the preparation of corpse;
- (b) change-rooms, separate for each sex, for the use of the employees employed at such premises;
- (c) refrigeration facilities for the refrigeration of corpses;
- (d) facilities for washing and cleaning of utensils and equipment inside the building;
- (e) facilities for cleaning of vehicles on the premises; and
- (f) facilities for loading and unloading corpses as contemplated in clause 72(6).

(2) No room on a funeral undertaker's premises must be used for any purpose other than the purpose for which it is intended.

(3) The preparation room -

(a) must be so designed as to –

- (i) be separate from all other rooms on the premises and so as not to be directly accessible from or in view of any office or salesroom: Provided that, where a preparation room on existing funeral undertaker's premises is so situated, the entrance thereto must be so concealed that the interior of the preparation room is completely out of sight of any person in any adjoining office or salesroom;
- (ii) enable obnoxious odours and vapours to be adequately treated; and
- (iii) be sufficiently ventilated and lighted.

(b) must have a floor-covering an area of not less than 6 m<sup>2</sup> for the first table of the kind referred to in section 72(3)(e) and 8m<sup>2</sup> for each additional table; constructed of concrete or similar waterproof material with a smooth non-slippery surface that is easy to clean, and sloped at an angle to ensure that any run-off will drain into a disposal system approved by the Council; and which, if it is replaced or laid after the date of commencement of this By-law, will be provided with half round filling where it meets the walls -

- (i) must have walls the inner surfaces of which have a smooth finish and are covered with a light-coloured washable paint or other suitable, smooth, waterproof, light-coloured and washable material;

- (ii) must be provided with a ceiling not less than 2,4 m above the floor level, which ceiling must be dust proof and painted with a light-coloured washable paint;
- (iii) must contain not less than one table of stainless steel or glazed earthenware or other suitable material, equipped with a raised rim on the outside, a tap with cold running water to which a flexible pipe can be connected and a drainage opening connected to an approved disposal system;
- (iv) must contain not less than one wash basin for each table, made of stainless steel or other suitable material, with a working surface of the same material, taps with hot and cold running water and a drainage opening permanently connected to an approved disposal system, and provided with disposable towels, a nailbrush and soap;
- (v) must have not less than one tap with running water to which a flexible pipe, long enough to reach all corners of such room, can be connected for cleaning the interior surfaces; and
- (vi) must have door openings that are not less than 0,82 m in width and 2,00 m in height so that corpses can be taken into and out of such room without any difficulty.

(4) Each change-room must contain at least the following –

- (a) one hand-basin with hot and cold running water for every six employees or part thereof;
- (b) disposable towels, soap, nailbrushes and disinfectant; and
- (c) not less than one toilet for every 15 male employees or part thereof and not less than one toilet for every 15 female employees or part thereof employed at the funeral undertaker's premises concerned, provided that, where a separate urinal for men forms part of such facilities, one toilet plus one separate urinal must be permissible for every 30 men or part thereof.

(5) Refrigeration facilities such as refrigeration or cold chambers for the keeping of corpses, must be installed in or close proximity of such preparation room and –

- (a) where refrigerators are used, it must be constructed of a material that does not absorb moisture, must be provided with removable trays and must be so designed as to drain into an approved drainage system and be easy to clean;
- (b) be of such nature that the surface temperature of any corpse must be no higher than 5°C during preparation. An accurate thermometer must be provided at the refrigerator or cold chamber and must be operational at all times.



- (c) In instances where cold chambers are used, it must comply with sections 10(3)(a)(ii), (b)(ii), (c), (d) and (h) and must be provided with shelves manufactured from a material that does not absorb moisture and that is easy to clean; and
- (d) Corpses are not be to be stored on top of each other and must be stored individually on the trays or shelves.

(6) The cleansing, loading and unloading facilities must consist of a paved area, screened from public view, with a drainage system into a gully connected to a sewer system approved by the Council.

(7) The loading and unloading of corpses and the cleansing of vehicles must not take place anywhere except in the area contemplated in section 72(6).

(8) The funeral undertaker's premises must be rodent-proof.

### **Conveyance of Mortal Remains**

**73.** No person may convey any mortal remains –

- (a) unless the mortal remains have been sealed in an airtight container and placed in a non-transparent, sturdy, sealed coffin; or
- (b) no coffin container in which the mortal remains have been placed may be conveyed unless –
  - (i) the outer surface of such coffin or container is free from any leakages or any other secretion matter emanating from such mortal remains; and
  - (ii) offensive odours are absent.

### **Hygiene**

**74.(1)** All health care waste generated must be stored, removed, transported and disposed of in accordance with Council's Environmental Health Bylaws.

(2) Every holder of a certificate of competence relating to funeral undertaker's premises must–

- (a) provide clean protective clothing consisting of surgical gloves, gumboots, plastic aprons so designed that the front hangs over the top of the gumboots, face masks and overcoats/overalls to all employees and all other persons involved in the preparation of

corpses or post-mortems, and each such employee or other person must, at all times when so involved, wear such clothing;

(b) keep such premises free of pests and insects at all times;

(c) clean immediately after the preparation of any corpse, all working areas or surfaces at such premises where corpses are prepared;

(d) wash and disinfect all equipment used for the preparation of corpses immediately after use;

(e) wash, clean and disinfect all protective clothing that has been used on the premises on a daily basis;

(f) keep such premises clean and tidy at all times; and

(g) if a corpse has been transported without a moisture-proof covering, wash and disinfect the loading space of the vehicle concerned after such corpse has been removed.

## CHAPTER 13

### APPEAL, EXEMPTIONS AND OFFENCES

#### Appeal

**75.** A person whose rights are affected by a decision delegated by the Council may appeal against that decision by given written notice of the appeal and the reasons therefore in terms of section 62 of the Local Government: Municipal Systems, 2000 (Act No. 32 of 2000) to the Council within 21 days of the date of the notification of the decision.

#### Exemptions

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

(2) The Council may –

(a) grant an exemption in writing and the conditions in terms of which, if any, and the period for which such exemption is granted must be stipulated therein;

(b) alter or cancel any exemption or condition in an exemption; or

(c) refuse to grant an exemption.

(3) An exemption does not take effect before the applicant has undertaken in writing to comply with all conditions imposed by the Council under subsection (2). If any activity is

commenced with before such undertaking has been submitted to the Council, the exemption granted will be of no force of effect.

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

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

### **Offences and penalties**

**77.(1)** Any person –

- (a) contravening or failing to comply with any of the provisions of this By-law;
- (b) makes a false statement knowing it to be false or deliberately furnishes misleading information to an authorised official or employee of or for the council;
- (c) threatens, resist, interferes with or obstructs an authorised officer or employee for or of the council in the performance of their duties or functions under this By-law,

will be guilty of an offence and will upon conviction by a court be liable to a fine not exceeding R 60 000, or imprisonment for a period not exceeding three years or both a fine as well as period of imprisonment, or such other fine or period of imprisonment which the Minister of Justice may from time to time determine in terms of the provisions of section 92 of the Magistrate's Courts Act. 1944 (Act No 32 of 1944).

(2) Any expense incurred by the Council as a result of a contravention of this By-law or in the doing of anything which a person was directed to do under this By-law and which he or she failed to do, may be recovered by the Council from the person who committed the contravention or who failed to do such thing.

## **CHAPTER 14 REPEAL OF BY-LAWS**

### **Repeal of existing By-laws**

**78.** The Council's existing Cemeteries, Crematoria and Undertakers By-laws are hereby repealed.

**Short title and commencement**

79. This By-law will be called the \_\_\_\_\_ Municipality Cemetery, Crematoria and Undertakers By-Law 20\_\_.

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