

## SEKHUKHUNE DISTRICT MUNICIPALITY

### SEKHUKHUNE DISTRICT MUNICIPALITY CEMETERIES AND CREMATORIA BY- LAWS

The Municipal Manager of the Sekhukhune District Municipality hereby, in terms of section 13(a) in conjunction with section 75(1) of the Municipal Systems Act, 2000 (Act32 of 2000), publishes the **Cemeteries and Crematoria By-laws for the Sekhukhune District Municipality**, to be approved by the Council, as set out hereunder.

#### 1. Application and purpose of this By-law

This By-law shall apply to all public cemeteries under the control of the municipality and to the private cemeteries, crematoria and funeral undertakers' premises located within the municipal area. This By-law is intended inter alia:-

- to provide for cemeteries for the burial and cremation of deceased persons;
- to provide for procedures, methods and practices to regulate funeral undertakers' premises, the burial, cremation and exhumation of deceased persons, the provision of grave plots and the maintenance thereof.

#### 2. Definitions

In this By-law, unless the context otherwise indicates, words used in masculine gender include the feminine, the singular includes the plural and vice versa;

**"Active Cemetery"** means a public, in use, cemetery situated within the area of jurisdiction of the municipality, and includes the buildings and fixtures within that cemetery;

**"Administrator of Cemeteries"** means the head of the section or department of the Municipality which has the responsibility for the administration of the cemeteries of the Municipality, and any person acting in his or her stead or any person duly authorized by the Municipality to act on his or her behalf;

**"Adult"** means a deceased person over the age of 12 years and where the word is used to define a corpse, a deceased person the dimension of whose coffin cannot be accommodated in an excavation of 1,4m in length and 400mm in width;

**"Aesthetic Section"** means a section of a cemetery, set aside by the municipality, wherein only a headstone may be erected on a berm and on which the municipality must provide and maintain a strip of lawn;

**"After-Hours Fee"** means a fee over and above the prescribed norm of tariff for interment cremations or burials outside normal cemetery operating hours, save

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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;

**“Anatomy Subject”** means a body delivered to an authorized school of anatomy in terms of the anatomy Act, 1959 (Act No. 20 of 1959);

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

**“Ashes”** means the cremated remains of a corpse;

**“Berm”** means a concrete base laid at the head of a grave on which a memorial stone, if any, is to be erected;

**“Body”** shall mean any dead human body, including the body of any stillborn child;

**“Burial”** means burial in the earth or some other form of interment and shall include any other mode of disposal of a body, including a tomb;

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

**“Burial Place”** means any burial-ground whether public or private, or any place whatsoever in which one or more bodies is/are buried, interred, cremated or otherwise disposed of, or where it is intended to bury, inter, cremate or otherwise dispose of a body.

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

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

**“Cemetery Services”** means services relating to the management, administration, operation and maintenance of an active cemetery;

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

**“Code of Practice”** means the obligations and responsibilities of the authorities to the dignified handling and disposal of the deceased;

**“Corpse”** means the remains of a deceased person and includes a stillborn

child;

**“Council”** means:-

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(a) the Sekhukhune District Municipal Council; or

(b) 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 System Act, 2000 (Act 32 of 2000); or

(c) a service provider fulfilling a responsibility under these By-laws, assigned to it in terms of section 81 (2) of the Local Government: Municipal System Act or any other law as the case may be;

**“Cremation”** means the process whereby the corpse is disposed of by fire;

**“Cremated Remains”** means all recoverable human remains after the cremation;

**“Crematorium”** means a crematorium as defined in section 1 of the Cremation Ordinance, 1965 (Ordinance No. 18 of 1965) and includes the building in which the ceremony is conducted and the cremation is carried out and any structure which in any special circumstance the MEC for health may approve as a crematorium;

**“Crematory”** means the room in the crematorium which houses the cremation refractory;

**“Cremator”** means the refractory in which the process of cremation of the coffined body is carried out;

**“Crematorium Section”** means a section of a cemetery or crematorium set aside by the Municipality for the burial of ashes;

**“Exhumation”** means the removal of a body from its grave;

**“Existing Funeral Undertaker’s Premises”** means existing funeral undertaker’s premises which are legally used as such on the date of commencement of this By-law;

**“Funeral Undertaker’s Premises”** means premises that are used or will be used for the preparation of corpses;

**“Full Capacity”** means that all existing space for interment has been used so that it is no longer reasonably practicable, whether for economic, aesthetic,

physical or any other good reason for the Municipality to set out any more sites for graves;

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**“Garden of Remembrance”** means a section of a cemetery or crematorium set aside for the erection of memorial work;

**“Grave”** means a piece of land excavated for the burial of a corpse within a cemetery or heritage site and includes the, headstone, number or marker of and a structure on or associated with such place;

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

**“Heroes Acre”** means an area of land set aside for the burial of a hero;

**“Holder of Reservation Certificate”** means a person to whom a certificate has been issued in terms of section 10 or transferred to in terms of section11;

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

**“Indigent Relief”** means an indigent person who has received assistance for burial or cremation from another person, welfare organization or non governmental organization;

**“Inhumation”** means the burial of human remains;

**“Interment”** means the inter/commit the human remains into its final place (see burial);

**“Landscape Section”** means a cemetery or section therein set aside by the Municipality where memorial work is restricted to a plaque or memorial slab (500mm) provided that such plaque or memorial slab is placed horizontal at 30mm below grass level;

**“Lawn Section”** means a cemetery or section therein set aside by the Municipality where memorial work is restricted to a headstone only;

**“Medical Officer of Health”** means the medical officer of health of the Municipality or of any other Government department appointed in terms of

section 22 of the Health Act, or any person appointed to assist him/her in terms of section 24 of the Health Act, who is authorized by the medical officer of health and who acts under his/her supervision;

**“Memorial Section”** means a section of a cemetery set aside for erection of memorials;

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

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**“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 includes a kerb demarcating a grave and a slab covering a grave;

**“Municipal Area”** means the area of jurisdiction of the Sekhukhune District Municipality;

**“Municipal Manager”** means the municipal manager as defined in section 82 (1) (a) of the Structures Act;

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

**“Name”** shall be the name of the deceased and includes any identifying description of a deceased human being who possessed no name or whose name is unknown at the time of death;

**“New Cemetery”** means a public cemetery which is developed, or set aside for development, by the Municipality and which is or may become an active cemetery as contemplated in section 2B of these By-laws;

**“New Funeral Undertakers’ Premises”** means funeral undertaker’s premises that are put into use as such after the date of commencement of these By-laws;

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

**“Normal Operational Hours”** means Monday to Sunday 07h00 to 17h00;

**“Office Hours”** means Monday to Friday 07h30 to 16h00 excluding Saturdays, Sundays and Public holidays;

**“Officer-in-Charge”** means the registrar of a crematorium or a person authorized by the Municipality to be in control of any cemetery appointed in terms of Regulation 21 of the Regulations relating to crematorium and cremation;

**“Passive Cemetery”** means a public owned, regulated, established, maintained, or controlled by the Municipality, that is certified as a “passive cemetery” in terms of section 5 (1) of this By-laws;

**“Pauper”** means a person who has died as an unknown person or if other relative or other person, welfare organization or non governmental organization can be found bear the burial or cremation costs of such deceased person;

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**“Plot”** means any area laid out in a cemetery for not less than 2 and not more than 3 graves adjoining each in any direction, in respect of which the exclusive right to inter has been acquired in terms of these By-laws;

**“Preparation”** means any action aimed at the preparation of a corpse for a funeral or for cremation, export or other disposal and includes the embalming of such corpse for the said purpose, and “prepare” and any word derived there from has a corresponding meaning; preparation shall not include the embalming of or incisions into a corpse;

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

**“Prescribed Fee”** means a fee determined by the Municipality in terms of section 10G (7) (a) (ii) of the Local Government Transition Act 1993 (Act No. 209 of 1993), or any other applicable legislation;

**“Private Cemetery”** means any cemetery which is not a public cemetery;

**“Private Grave”** means any piece of ground that has been laid out for a grave within any cemetery and in respect of which an exclusive right of use has been reserved in terms of section 23 of these By-laws;

**“Public Cemetery”** means any cemetery which is owned, regulated, established by, or the control of which is legally vested in the Municipality;

**“Refugee”** means any person given refugee status;

**“Registered Description”** means the description of the land as set out in the title deed registered at the deeds office in terms of the Deeds Registry Act, 1937 (Act 47 of 1937);

**“Registrar of Deaths”** means a person duly appointed to register deaths in terms of the Births and Deaths Registration Act, 1992 (Act 51 of 1992);

**“Resident”** means a person who, at the time of death, ordinarily resides within the boundaries of the Municipality;

**“SANS”** means the South African National Standard Codes of Practice or the South African Bureau of Standards Codes of Practice as contemplated in Government Notice No. 1373 published in Government Gazette 24002, dated 8 November 2002 in terms of the Standards Act, 1993 (Act 29 of 1993);

**“Service Area”** means the area of jurisdiction of the Municipality;

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**“Service Delivery Agreement”** means an agreement between the Municipality and a service provider in terms of which the service provider is required to provide cemetery services;

**“Still-Born Child”** means a human foetus that has had at least 26 weeks of intra-uterine existence but who was born dead in the sense of showing no sign of life after a complete birth;

**“Strewn”** means the dignified scattering of ash in the garden of remembrance;  
**“Structures Act”** means the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

**“Supervisor”** means a person appointed from time to time by the Municipality to supervise any cemetery in accordance with section 3 (1) of these By-laws;

**“System Act”** means the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);

**“Tariff”** means the charge levied for rendering cemetery services, determined and promulgated by the Municipality in terms of the Municipality’s tariff policy By-laws adopted under section 75 of the System Act;

**“Tomb”** means an above ground burial vault;

**“Undertaker”** means a person registered to undertake the dignified preparation of a human body for burial or cremation and is in possession of the Council’s and legislature’s certificate of competence;

## **Principles and Objectives**

The Municipality, acting under the powers granted to it by National and Provincial Legislation including the Regulations relating to funeral undertaker's premises, made by the Minister of Health and Welfare in terms of section 33 and 39 of the Health Act, 1977 (Act No. 63 of 1977), and published as Government Notice No. 237 of 8 February 1985, and aware of the dignity of its residents and the needs to preserve that dignity, and aware that a corpse is to be granted respect, and that all its residents have the right to inter a corpse in a cemetery or to cremate a corpse in a crematorium, hereby adopts these By-laws to control funeral undertakers' premises, to make provision for the allocation of land for the purposes of the burial of human remains, to develop and maintain new, existing and passive cemeteries, to permit its residents to dispose of a corpse by cremation and to provide space allowing the preservation of the remains of a cremation in a dignified manner.

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### **CHAPTER 2: ESTABLISHMENT OF PUBLIC CEMETERIES**

#### **2. Establishment of Cemeteries**

- (1) The Municipality may from time to time, set aside, acquire or develop any ground for the purpose of establishing a cemetery.
- (2) The Municipality must at all times ensure that sufficient burial space is available for the burial of bodies within the service area.
- (3) The Municipality is responsible for the maintenance and repairs of damage to all cemeteries under its control, other than the maintenance and repair of memorial work.
- (4) The cemetery service may be suspended by the Municipality for maintenance or repair but only after reasonable notice has been given by it of its intention to do so in a newspaper, published in an official language, circulating in the municipal area and specifying that an objection to the suspension may be made in writing to the municipal manager within 30 days of the publication of the notice in the newspaper. Suspension may not be made unless there is another active cemetery in the same category that is available to the public in the service area as an adequate temporary substitute.

#### **3. Caretakers/Supervisors**



(1) The Municipality or service provider must appoint a caretaker to every cemetery to control the day to day management of the cemetery.

(2) The caretaker may supervise more than one cemetery.

#### **4. Classification of cemeteries**

(1) The Municipality or service provider may classify cemeteries into different categories for the purposes of establishing different levels of service.

(2) The classification must be undertaken in such a manner that the cemeteries are classified for the purposes of tariff or fee differentiation in order to ensure affordability but must not amount to unfair discrimination.

#### **5. Passive Cemeteries**

(1) Once a cemetery is full and can no longer be used as an active cemetery, the Municipality must issue a certificate declaring that cemetery to be a passive cemetery.

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(2) The Municipality or service provider may close any section or the cemetery on the grounds of it being full and it may continue to use the rest of the cemetery as an active one until the whole cemetery is full and, when that happens, it must be declared a passive cemetery in accordance with subsection (1).

(3) The Municipality is responsible for the maintenance of all passive cemeteries.

### **CHAPTER 3: PRIVATE CEMETERIES**

#### **6. Registration of existing graves**

Any owner, other than the Municipality, of land in which any grave exist, must, if he is aware of its existence inform the Municipality about it on a form prescribed by the Municipality.

#### **7. Establishment and continued use of private cemeteries**

No person shall establish a private cemetery within the service area, and no owner of any private cemetery already in existence shall, if the use of such cemetery was not previously authorized by the Municipality, continue to use it

for burial purposes without the Municipality's authority having been obtained in terms of section 8.

### **8. Application for a private cemetery**

(1) An application to establish a private cemetery, or for the Municipality to approve the continued use of a private cemetery must be made in writing to the municipal manager. The application must include:-

(a) a locality plan to a scale of not less than 1:10 000, showing the position of a proposed or existing cemetery in relation to the boundaries of the land on which it is either proposed to be established or upon which it is already situated, and a registered description of the site showing all streets, public places and privately owned property within a distance of 100m of the site.

(b) a block plan to a scale of at least 1 in 500 showing the position of external boundaries, internal roads and path, subdivision, gravesides, drainage and any building existing or proposed to be erected.

(c) a plan and sections to a scale of least 1 in 100 of any building existing or proposed to be erected, which shall in the latter case conform with the building and sewage By-laws of the Municipality.

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(d) a list of registers of records kept, or proposed to be kept for the identification of graves, the scale or the transfer of grave sites and interments.

(e) the full names and addresses of the owner and the caretaker.

(f) the nature of the title under which the owner of the private

cemetery holds or will hold the land on which the cemetery is or will be used as a cemetery, and whether the land is encumbered in any way.

(g) proof to the satisfaction of the Municipality that the owner has adequate financial measures and insurance to be able to discharge the obligation of maintaining the private cemetery and all existing and future graves; and

(h) a schedule of burial fees proposed to be charged or currently being charged.

2. On receipt of the application referred to in subsection (1), the municipal manager must place a notice in at least one newspaper, in an official provincial language, circulating within the municipality stating the nature of the application and specifying a date, being not less than 14 days, by which objections to the granting of the application must be lodged with the municipal manager.

3. Within seven days of the closing date for the lodging of objections, the municipal manager must submit the application to the Municipality for consideration by the Municipality.

4. The Municipality must consider the application and any objections to it that may have been lodged within 30 days. If, after consideration of the application and any objection to it, the Municipality is satisfied that no interference with any public amenity, or nuisance or danger to the public health is likely to take place or arise, the Municipality may authorize, in writing, the establishment or continued use of the proposed private cemetery, in accordance with the written application submitted to the Municipality in terms of subsection (1).

5. If approval is granted for the establishment or continued use of a private cemetery or for the continued use of a private cemetery in terms of subsection (4), no departure from the plans submitted in terms of subsection (1) may be made without the approval of the Municipality in writing.

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**9. Duties of the owner of a private cemetery**

Every owner of a private cemetery which has been authorized in terms of section 8 (4) to establish or continue the use of a private cemetery shall:-

(a) maintain a burial register in accordance with section 21 of the Births and Deaths Registration Act, 1992 (Act 51 of 1992)

(b) maintain a duplicate copy of the burial register referred to in subsection

(a) above at a place other than the place where the burial register referred to in subsection (a) is kept;

(c) keep a record of records showing:-

(i) the number of each grave site and the owner of the ground in which the grave is situated; and

(ii) the number of interments in each and every site and the name, age, sex, race, last known address, date and cause of death of each person interred in it;

(d) comply with the provisions of Chapter 3 and any other relevant provisions of the Births and Deaths Registration Act;

(e) maintain all grounds, fences, gates, roads, paths and drains in good order and condition and clear of weeds and overgrowth;

(f) provide for the identification of grave sites by subdividing the cemetery into blocks containing a number of graves or grave sites and demarcated by means of signs showing the number and situation of each block;

(g) separately number every grave site in each block by means of a durable number plate;

(h) maintain all signs and number plates in a neat and legible condition;

(i) allow the municipality or its duly authorized officers to enter and inspect the cemetery, the burial register and all records kept in connection therewith;

(j) render a monthly report on all burials to the municipal manager on a date to be determined by the municipal manager, detailing the name, last known address, age, sex, race, date and cause of death of every deceased person who has been interred, and the name of the medical practitioner who issued the certificate of death, a copy of the burial order, the authority that issued the burial order, the block and grave site number and the date of interment;

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(k) render an annual return to the municipal manager on a date to be determined by the municipal manager, detailing the names and addresses of all trustees, committee members and persons controlling the private cemetery, if there be any;

(l) appoint a caretaker/supervisor to manage the cemetery and keep the requisite records;

(m) the appointment and any subsequent appointment of a caretaker / supervisor must be reported to the municipal manager in an appropriate monthly report submitted to the municipal manager in terms of subsection (j); and

(n) comply with any other conditions prescribed by the Municipality.

## **CHAPTER 4: SERVICE PROVIDERS**

### **10. Agreements, Delegation and Customer-Care Charter**

(1) The Municipality may discharge all or any of its obligations under these By- laws for the rendering of cemetery services by entering into a service delivery agreement with a service provider or service providers in terms of section 81(2) of the Systems Act: Provided that it shall not be discharged from its obligation to enforce these By-laws or to monitor whether it has been complied with by the service provider or any other person.

(2) Subject to the provisions of the Systems Act or any other law, the Municipality assign to a service provider any power enjoyed by it under these By-laws but may do so only if the assignment is necessary to enable the service provider to discharge an obligation under the service delivery agreement.

(3) Any reference in this By-law to “municipality or service provider” must be read as applying only to the Municipality if there is no relevant service delivery agreement and, if there be a service delivery agreement it must be read as applying to the service provider.

(4) Without derogating from the generality of the provisions of subsection (1), the Municipality may not discharge an obligation to monitor and enforce the provisions of these By-laws by entering into an agreement with a service provider to do so.

(5) A service provider employed in terms of subsection (1) must prepare a customer care charter which shows how the service provider intends to deal with complaints and customer care.

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#### **11. PENALTIES**

Any person convicted of a breach of these bylaws shall be liable for a fine of R1000,00 in the case of a first conviction or, in the case of a second or subsequent conviction for the same offence, a fine not exceeding R2000,00 or in default of payment of any fine imposed in either case, imprisonment for a period not exceeding six (6) months.

