

LOCAL AUTHORITY NOTICE 280 OF 2022



LEPHALALE

LOCAL MUNICIPALITY

The Municipal Manager of Lephalale Local Municipality hereby, in terms of Section 13(a) of the Local Government Municipal Systems Act, 2000 (Act 32 of 2000), publishes Lephalale Local Municipality's Cemetery By-laws as approved by its Council, as set out hereunder.

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1. DEFINITIONS

1.1 In these By-laws, unless the context otherwise indicates –

“adult” means a deceased person over the age of 12 (twelve) years and where the word is used to define a corpse, a deceased person whose coffin will fit into a grave opening prescribed for adults in section 15;

“aesthetic section” means a cemetery or section within a cemetery which has been set aside by the Municipality wherein only head stones may be erected;

“approved” means approved by the Municipality;

“ashes” means the cremated remains of a corpse;

“berm” means a concrete base laid at the head of a grave and on which a memorial is erected;

“burial” means interment in the earth; i.e., a prepare grave;

“burial order” means an order issued in terms of the Births and Deaths Registration Act, 1992 (Act 51 of 1992);

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

“cemetery” means a land or part of a land within the municipal area set aside by the Municipality as a cemetery;

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

“corpse” means the mortal remains of a deceased person and includes a stillborn child or foetus;

“cremated remains” means all recoverable ashes after a cremation;

“exhumation” means the removal of a corpse from its grave;

“grave” means a piece of land within a cemetery or heritage site, excavated for the burial of a corpse and includes the head stone, number or marker and a structure on or associated with the grave;

“hero” means a person who performed a heroic act on behalf of the country and is recognised therefore by the Municipality’s Council (By-laws);

“heroes’ acre” means an area of land set aside for the burial of a hero;

“memorial section” means a section within a cemetery set aside for the erection of memorials;

“memorial wall” means a structure within a cemetery which contains niches in which urns containing ashes can be stored;

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

“Municipality” means the Lephalale Local Municipality, and includes any political structure, political office bearer, municipality or duly authorised agent thereof or any employee thereof acting in connection with these By-laws by virtue of a power vested in the Municipality and delegated or sub-delegated to such political structure, political office bearer, municipality or agent or employee;

“niche” means a compartment in the memorial wall for the placing of ashes;

“prescribed” means prescribed by the Municipality;

“prescribed fee” means a fee determined by the Municipality in its approved tariff structure;

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

“RSA” means the Republic of South Africa.

- 1.2 If any provision in these By-laws vests or imposes any power, function or duty of the Municipality in or on an employee of the Municipality and such power, function or duty has in terms of Section 81(2) of the Local Government Municipal Systems Act, 2000 (Act 32 of 2000), or any other law been assigned to a service provider, the reference to such employee must be read as a reference to the service provider or, where applicable, an employee of the service provider authorised by it.

2. PRINCIPLES AND OBJECTIVES

The Municipality, acting under the powers granted to it by national and provincial legislation and the regulations made under sections 33 and 30 of the Health Act, 1977 (Act 63 of 1977), read in conjunction with Section 93(2) of the National Health Act, 2004 (Act 61 of 2003), and aware of the dignity of its residents and the need to preserve that dignity, and aware that a corpse is to be granted respect, and that all its residents have the right and the duty 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 existing municipal cemeteries and to provide space allowing for the preservation of the remains of a cremation in a dignified manner.

CHAPTER 1

GENERAL PROVISIONS RELATING TO MUNICIPAL CEMETERIES

3. APPOINTMENT OF CARETAKER

- 3.1 The Municipality may appoint a caretaker of each municipal cemetery to control and administer such cemetery.
- 3.2 The caretaker must take into account the customs of deceased persons and the people responsible for the burial and must accommodate these within the framework of these By-laws.

4. HOURS OF ADMISSION FOR THE PUBLIC

- 4.1 Municipal cemeteries are open to the public during the following hours: 08:00 – 16:00, however, if it is in the interest of the public, the Municipality may close to the public a cemetery or part thereof for such periods as the Municipality may deem necessary.
- 4.2 No person, excluding workers or persons with permission, may be in or remain in a municipal cemetery or part thereof before or after the hours mentioned in sub-section 4.1 or during a period when it is closed to the public.

5. CHILDREN

No child under the age of 12 (twelve) years may enter a municipal cemetery unless he or she is under the care and supervision of a parent or guardian over the age of 18 years.

6. KEEPING TO PATH

Except for the purposes permitted by these By-laws, a person may only use a path provided within the cemetery.

7. PROHIBITED CONDUCT WITHIN MUNICIPAL CEMETERIES

7.1 No person may –

- (a) commit or cause a nuisance within a cemetery;
- (b) ride an animal or cycle within a cemetery;
- (c) bring or allow an animal to wander inside a cemetery;
- (d) plant, cut, pick or remove a tree, plant, shrub or flower without the permission of the caretaker;
- (e) hold or take part in a demonstration in a cemetery;
- (f) interrupt during the performance of his or her duties an official, workman or labourer employed by the Municipality in a cemetery;
- (g) obstruct, resist or oppose the caretaker in the course of his or her duty or refuse to comply with an order or request which the caretaker is entitled to under these by-laws to make;
- (h) mark, draw, scribble, erect an advertisement or object on a wall, building, fence, gate, memorial work or other erection within a cemetery;
- (i) use water for any form of gardening without the permission of the caretaker;
- (j) plant trees, flowers or shrubs on or between graves;
- (k) leave any rubbish, soil, stones, debris or litter within the cemetery;
- (l) in any way damage or deface any part of a cemetery or anything contained therein;
- (m) enter or leave a cemetery except by an entrance provided for the purpose;
- (n) solicit any business, order or exhibit, or distribute or leave a tract, business card or advertisement within a cemetery;
- (o) treat a grave or memorial work with disrespect, such as climbing onto or sitting on a grave or memorial work;
- (p) enter an office, building or fenced place in a cemetery except in connection with lawful business;
- (q) with the exception of a blind person, bring an animal into a cemetery; or
- (r) expose a corpse or a part thereof in a cemetery.

8. RIGHT OF INTEREST IN THE GROUND

- 8.1 No person shall acquire any right to or interest in any ground or grave in a cemetery other than such rights or interests as may be obtainable under these By-laws.
- 8.2 The Municipality may, upon payment of the prescribed fee, sell to a person the use of a grave in a section of a cemetery for a period not exceeding 20 (twenty) years.
- 8.3 The Municipality –
- (a) may set aside different areas in a cemetery for exclusive use by different religious or cultural groups, taking into consideration the customs and religious conventions of such groups;
 - (b) may launch an awareness campaign regarding the use of land for burial purposes whereby the environmental advantages of cremation as an alternative to burial is stressed, and
 - (c) may, if compelled to do so by environmental considerations such as shortage of land for burial, and subject to the provisions of any other law regarding the rights of a person, request that a corpse be cremated instead of interred.

CHAPTER 2**GENERAL PROVISIONS RELATING TO INTERMENT****9. CONSENT REQUIRED FOR INTERMENT**

- 9.1 No person may dispose of a corpse in any other manner than by interring it in a cemetery or having it cremated in a crematorium, and a person who wishes to dispose of a corpse must obtain the written consent of the caretaker before he or she disposes of the corpse.
- 9.2 A person who wishes to obtain the consent as contemplated in sub-section 9.1 must submit to the caretaker an application in writing in a form similar to the form in schedule 1 attached to these By-laws together with –
- (a) the prescribed fee;
 - (b) a copy of the deceased's death certificate, and
 - (c) a burial order issued in terms of the Births and Deaths Registration Act, 1992,
- and the caretaker may not approve the application unless all of the above requirements are met.
- 9.3 An application must be submitted to the caretaker in respect of an interment where the Municipality is responsible for the digging of the grave, not later than 10:00 two (2) days (48 hours) before the intended interment, whether it be a corpse or ashes.

- 9.4 Should any alteration be made in the day or hour previously fixed for an interment, or an interment be cancelled, in the instance where the Municipality is responsible for the digging of a grave, notice of the alteration must be given to the caretaker at the cemetery at least six (6) hours before the time fixed for the interment, and no refund will be made on fees paid in respect of the opening of an existing grave.
- 9.5 The application contemplated in sub-section 9.2 must be signed by the nearest surviving relative of the deceased person whose corpse will be buried in the grave, or such other person as the nearest surviving relative may authorise to sign the application on his or her behalf, however, if the caretaker is satisfied that the signature of the nearest surviving relative cannot be obtained timeously, or for any other valid reason, he or she may in his or her discretion grant an application signed by any other interested person.

10. INTERMENT

- 10.1 An interment may take place between 09:00 and 16:00 on week days and between 09:00 and 12:00 on Saturdays and Sundays.
- 10.2 Despite the provisions of sub-section 10.1, the caretaker to whom an application is made may, if the case is one of emergency, permit interment outside the times contemplated in sub-section 10.1, in which case an additional fee as prescribed by the Municipality will be payable.

11. CEMETERY REGISTER

- 11.1 The caretaker must keep a record of all interments and the record must contain –
- (a) depth of grave;
 - (b) grave number;
 - (c) name of deceased;
 - (d) address of deceased;
 - (e) gender of the deceased;
 - (f) age of the deceased;
 - (g) date of death;
 - (h) date of interment;
 - (i) cause of death;
 - (j) cemetery fees paid, and
 - (k) receipt number.

12. INDIGENT OR DESTITUTE PERSONS

- 12.1 A person may apply to the Municipality for the burial of the corpse of an indigent or destitute person and must provide proof that the deceased was granted the status as an indigent or destitute person in terms of the Municipality's Indigent Policy, and the Municipality shall decide if the corpse is to be buried as an indigent or destitute person.
- 12.2 Subject to the provisions of section 48 of the Health Act, 1977 (Act 63 of 1977), read in conjunction with section 93(2) of the National Health Act, 2004 (Act 61 of 2003), and section 10 of the Human Tissue Act, 1983, the corpse of a destitute person or an unclaimed corpse may be buried according to conditions determined by the Municipality.

13. NUMBER OF CORPSES IN ONE COFFIN

- 13.1 Subject to the provisions of sub-section 13.2, only one (1) corpse may be contained in a coffin.
- 13.2 More than one (1) corpse may be contained in one (1) coffin on the consent of the caretaker first having been obtained and the prescribed fee having been paid, in the case of –
- (a) a mother and child who died during childbirth, or
 - (b) family members who –
 - (i) died together, or
 - (ii) died a short while after each other, and the burial of the first dying member has not yet taken place.

CHAPTER 3**INTERMENT****14. DIMENSIONS OF GRAVES AND APERTURES**

- 14.1 The standard dimensions of a grave are as follows:

(a) Adult

- (i) Single grave (one [1] coffin): Length – 2200mm, width – 900mm (6 feet).
- (ii) Double (two [2] coffins): Length – 2200mm, width – 900mm (8 feet).

(b) Child

Single grave: Length – 1500mm, width – 700mm (5 feet).

- 14.2 Any person requiring an aperture for an interment in an adult's grave of a size larger than the standard dimensions must, when submitting an application in terms of section 9, specify the measurements of the coffin and pay the fees prescribed by the Municipality for enlarging the aperture.
- 14.3 No brick work is allowed inside open graves in any of the municipal cemeteries.

15. DEPTH OF GRAVES

- 15.1 An adult's grave (6 feet) is 1900mm in depth.
- 15.2 An adult's grave (8 feet) is 2400mm in depth.
- 15.3 A child's grave (5 feet) is 1500mm in depth.
- 15.4 The lid of the coffin, or where one (1) coffin has been buried on top of another coffin, the lid of the top coffin may not be less than 1200mm from the surface.

16. RESERVATION OF GRAVES

- 16.1 A person desiring to reserve the use of a grave must apply for it to the caretaker and must pay the fee prescribed by the Municipality.
- 16.2 A restriction is placed on the reservation of graves and reservations shall only be accepted for adult graves as stated in sub-section 16.3.
- 16.3 In the event of an interment of a husband or wife, only one (1) additional adjoining grave may be reserved for the survivor.
- 16.4 In the event of an interment of a husband or wife in the aesthetic section, an additional adjoining grave may be reserved for the survivor, however, subject to the provisions of section 19, the interment of the survivor may be permitted in the same grave.
- 16.5 Where another person, other than the applicant, has mistakenly used a grave, the caretaker must allocate another grave within the cemetery to the applicant.

17. CHILD'S COFFIN TOO LARGE

Should a child's coffin be too large for the dimensions of a child's grave, it must be placed in an adult grave and the prescribed fees for an adult's interment must be paid by the person submitting an application in terms of section 9, and in the instance where a child is interred in a section intended for adults, the fees applicable to adults apply.

18. CONSTRUCTION MATERIAL OF A COFFIN

A coffin interred in a grave must be constructed of wood or bio-degradable material.

19. NUMBER OF BODIES IN ONE GRAVE

Subject to the provisions of sub-section 15.2 and section 29, more than one (1) corpse may be interred in a single grave.

20. COFFIN TO BE COVERED WITH EARTH

The person contemplated in sub-section 9.1 must ensure that a coffin, upon being placed in a grave, is covered without delay with at least 300mm of earth.

21. RELIGIOUS CEREMONY

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

22. HEARSE AND VEHICLES AT A CEMETERY

- 22.1 No hearse or other vehicle may enter a cemetery without the prior permission of the caretaker having been obtained first.
- 22.2 No hearse or other vehicle may use any other route to enter a cemetery than the routes set aside for that purpose.

23. INSTRUCTION OF CARETAKER

A person taking part in a funeral procession or ceremony in a cemetery must follow instructions by the caretaker.

24. MUSIC INSIDE A CEMETERY

Only sacred singing is allowed in a cemetery, except in the case of a police or military funeral, in which case the prior permission of the caretaker must be obtained.

25. OCCUPATION OF A SHELTER

No person may, for the purpose of a funeral, occupy a shelter in a cemetery for more than 45 (forty-five) minutes.

26. NUMBER ON GRAVE

No person may enter a corpse into a grave on which a peg marked with the grave number has not been fixed.

CHAPTER 4**EXHUMATION OF A CORPSE AND RE-OPENING OF GRAVES****27. DISTURBANCE OF MORTAL REMAINS**

27.1 Subject to the provisions of an exhumation order given in terms of section 3(4) of the Inquests Act, 1959, any other provision of any Act relating to the exhumation of corpses –

- (a) no mortal remains or ground surrounding it in a cemetery may be disturbed;
- (b) no grave may be re-opened, and
- (c) no corpse may be removed from a grave,

without the written consent of the Municipality.

27.2 The prescribed fees for exhumation must be paid to the caretaker at least two (2) days before the date fixed for the exhumation or removal of the corpse.

28. TIME OF EXHUMATION

No person may exhume or cause a corpse to be exhumed during such time as the cemetery is open to the public.

29. RE-OPENING OF GRAVE

29.1 No person may re-open a grave for the purpose of interring a second corpse in the same grave unless –

- (a) the grave was initially made deeper for this purpose;

- (b) if not made deeper, then only after 10 (ten) years have passed since the interment of the first corpse;
- (c) for purposes of burial a receptacle containing ashes, the depth does not exceed 300mm;
- (d) the consent contemplated in sub-section 27.1 has been obtained, and
- (e) the fee prescribed by the Municipality has been paid.

29.2 The Municipality has the right to re-open a grave for the purpose of establishing, by reading the inscription on the coffin, the identity of the corpse.

CHAPTER 5

CARE OF GRAVES

30. SHRUBS AND FLOWERS

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

31. CARE OF GRAVES

The maintenance of a grave is the responsibility of the person contemplated in sub-section 8.2.

CHAPTER 6

CREMATED REMAINS

32. RECEPTACLES AND ASHES

32.1 The family of the deceased must provide a receptacle on which the full name of the deceased person is indicated.

32.2 Where a receptacle is intended to be placed in a niche within the memorial wall –

- (a) it must be made of wood or stone;
- (b) be of a size and design as to fit into the niche, and
- (c) if the niche is meant to be sealed, have affixed to it a granite tile on which the full name of the deceased person is inscribed.

33. BURIAL AND EXHUMATION OF ASHES

33.1 A person may deposit ashes in a grave or niche within a memorial wall.

33.2 A person must obtain the consent of the caretaker if he or she wishes to –

- (a) bury ashes in a grave;
- (b) exhume ashes from a grave, or
- (c) scatter ashes,

and the caretaker must, upon receiving payment of the prescribed fee –

- (d) give written consent to the applicant to bury, exhume or scatter the ashes, and
- (e) in the instance of burial or exhumation, prepare the grave for burial or exhumation.

33.3 A grave for the burial of ashes must measure 610mm in length, 610mm in width and 610mm in depth.

CHAPTER 7**ERECTION AND MAINTENANCE OF MEMORIAL WORK****34. CONSENT OF THE MUNICIPALITY**

34.1 No person may bring into a cemetery, erect, alter, paint, clean, renovate, decorate, remove or otherwise interfere with any memorial work or cut any inscription thereon in a cemetery without the written consent of the Municipality.

34.2 Before erecting memorial work, the following must be submitted to the Municipality:

- (a) an application containing all relevant information of the applicant as well as the deceased person on a form similar to the form in schedule 2 attached to these By-laws;
- (b) a plan which gives an indication of the measurements and the position of the proposed memorial work;
- (c) specifications of the material of which the memorial work is to be constructed, and
- (d) the epitaph.

34.3 The application to erect memorial work must be submitted to the Municipality at least 30 (thirty) days before the erection commences and must be accompanied by the prescribed fee, and the Municipality, when granting consent, may impose such conditions as it deems necessary.

34.4 No person may bring into the cemetery any material for the purpose of constructing therewith any memorial work on any grave unless and until –

- (a) the provisions of sub-sections 34.1, 34.2 and 34.3 have been complied with, and
 - (b) all charges due in respect of such grave have been duly paid.
- 34.5 The Municipality's consent for the proposed memorial work is valid for six (6) months only, and in the event of the memorial work not being erected within the prescribed time period, a new application must be submitted.
- 34.6 The grave number must be indicated, in a workman like manner, in figures 30mm in size, in the top right-hand corner on the base of the memorial.

35. REQUIREMENTS FOR THE ERECTION OF MEMORIAL WORK

- 35.1 A person who intends to erect memorial work in any of the municipal cemeteries must comply with the following:
- (a) he or she must be in possession of a plan approved by the Municipality;
 - (b) all work must be effected according to the conditions contemplated in sub-section 34.3;
 - (c) proceedings must be of such a nature that no damage be caused to any structure or offence given;
 - (d) where a memorial has a base on ground level or on the berm, the base may not be more than 900mm in length, 250mm in width and 250mm in height for a single grave, and not more than 2700mm in length, 250mm in width and 250mm in height for a double grave;
 - (e) with the caretaker's permission, the name of the maker can be displayed on memorial work, but no address or any other particulars may be added thereto, and the space utilized for it may not be larger than 40mm x 100mm, and
 - (f) granite tiles within the memorial wall measure 360mm x 360mm and must be obtained from the Municipality when an application is submitted to inter ashes in a niche within the memorial wall. It is the responsibility of the applicant to have the tile engraved with the name of the deceased person, the date of birth and the date of death. A photograph of the deceased person may be affixed to the tile where the inscription is.

36. POSITION, MOVEMENT AND REMOVAL OF MEMORIAL WORK

- 36.1 No person may erect memorial work on a grave before the position in which such memorial work is to be placed has been indicated by the Municipality.
- 36.2 Should the provision of sub-section 36.1 not be complied with, the Municipality has the right to alter the position of memorial work and to recover the cost of the alteration from the person who originally erected such memorial work.

36.3 In the instance where memorial work has originally been placed in a certain position with the express consent of the Municipality or its employee, any alteration of the position in terms of the provisions of this section is executed at the expense of the Municipality.

36.4 Memorial work placed, erected, constructed, built, altered, decorated, painted or otherwise dealt with in a cemetery in such a manner that any provisions of these By-laws are contravened, may be removed, after due notice by the Municipality, at the cost of the person who originally erected such memorial work, without payment of any compensation.

37. REPAIRS TO MEMORIAL WORK

Should the person who originally erected memorial work allows such memorial work to fall into such a state of disrepair that it may cause danger or deface to the cemetery, the Municipality may cause a notice of compliance as contemplated in section 58, to be served on such person.

38. SUPERVISION OF WORK

A person engaged upon any work within a cemetery must effect the work under the supervision of the caretaker.

39. DAMAGING OF MEMORIAL WORK

The Municipality under no circumstances accepts responsibility for any damage which may at any time occur to any memorial work and which is not due to the negligence of the Municipality's employees.

40. CONVEYING OF MEMORIAL WORK

No person may convey any stone, brick or memorial work or a portion thereof within a cemetery upon a vehicle or truck which may cause damage to the paths or grounds or structures of the cemetery.

41. VEHICLES AND TOOLS

Every person engaged with work upon a grave or plot must ensure that the vehicles, tools and appliances be of such a kind as not to contravene these By-laws and by no means block any road or roads.

42. COMPLYING WITH THE MUNICIPALITY'S DIRECTIONS

A person carrying out work within any of the municipal cemeteries must in all respects comply with the directions of the Municipality.

43. TIMES FOR BRINGING IN MATERIAL AND DOING WORK

43.1 No person may bring memorial work or material into or do any work other than the dismantling of memorial work for burial purposes within a cemetery except during the following hours: Mondays to Fridays between the hours of 08:00 and 15:00.

- 43.2 No person may engage in work which may be disturbing when a funeral takes place and for the duration of the funeral.

44. INCLEMENT WEATHER

No person may fix or place any memorial work while the soil is in an unsuitable condition.

45. PROOF OF WRITTEN CONSENT

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

CHAPTER 8

SECTIONS IN THE MUNICIPAL CEMETERIES

46. MUNICIPALITY MAY ESTABLISH SECTIONS

The Municipality may establish one or more of the following sections within any of its cemeteries:

46.1 Monumental section

- (a) Memorial work may be erected upon the whole surface of the grave subject thereto that the provisions of section 35 must be complied with and that the following measurements may not be exceeded:
- (i) no headstone may exceed a height of 1500mm above the berm;
 - (ii) width: 900mm in the case of a single grave and 2700mm in the case of a double grave, and
 - (iii) thickness: 250mm.

46.2 Memorial wall

- (a) This section contains the wall of remembrance with niches.
- (b) A container intended to be placed inside a niche may not exceed 300mm x 150mm x 150mm in size.

46.3 Heroes' acre

- (a) No burial may take place in the heroes' acre unless permission has been granted by the Mayor or his or her nominee.
- (b) Upon approval of the status of "hero" on the deceased to be buried in the heroes' acre, the relevant cemetery fee be paid from the Mayoral Discretionary Fund.

- (c) The dimension of the grave excavation is as applicable in sections 14 and 15 prescribed in these By-laws.

46.4 Aesthetic section

- (a) Only a head stone may be erected and a slab may not be erected on, and a kerb may not be erected around the grave. No headstone may exceed a height of 1500mm above the berm.

- (b) The dimensions of a head stone are as follows:

- (i) Adult grave:

Where a head stone has a base on ground level or on the berm, the base may not be more than 900mm in length, 250mm in width and 250mm in height for a single grave and not more than 2700mm in length, 250mm in width and 250mm in height for a double grave.

- (ii) Child's grave:

Where a head stone has a base on ground level or on the berm, the base may not be more than 610mm in length, 250mm in width and 250mm in height for a single grave and not more than 1200mm in length, 250mm in width and 250mm in height for a double grave.

CHAPTER 9

PRIVATE CEMETERIES

47. BY-LAWS APPLY

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

48. ESTABLISHMENT AND CONTINUED USE OF PRIVATE CEMETERIES

- 48.1 No person may, without the Municipality's consent first been obtained, establish a private cemetery, and no proprietor of a private cemetery already in existence may, if the use of the cemetery was not previously authorised by the Municipality, continue to use the existing cemetery for burial purposes, provided the Cemetery is registered with the Municipality within 36 (thirty-six) months of publishing of this By-law.

- 48.2 A person who wishes to apply for the Municipality's consent to establish a cemetery or use a cemetery as contemplated in sub-section 48.1, must submit to the Municipal Manager an application in the form similar to the form in schedule 3, which schedule refers, in writing together with –

- (a) a locality plan to a scale of not less than 1:10,000 which shows –

- (i) the position of the proposed cemetery or existing cemetery in relation to the boundaries of the land on which it is proposed to establish it or upon which it is situated as the case may be;
 - (ii) the registered description of the site;
 - (iii) all streets, public places and privately owned property within a distance of 100m of the site;
 - (b) a "block" plan to a scale of not less than 1:500 showing the position of external boundaries, internal roads and paths, sub-divisions, grave sites, drainage and any buildings existing or proposed to be erected;
 - (c) a plan and sections to a scale of not less than 1:100 of any building existing or proposed to be erected, and which must in this case conform with the National Building Regulations and Building Standards Act, 107 (Act 103 of 1977) and the Water Supply and Sanitation Services By-laws of the Municipality (Local Authority Notice 223, Provincial Gazette Extraordinary No 1951, 5 July 2011).
 - (d) a list of registers or records kept or proposed to be kept with reference to –
 - (i) identification of graves;
 - (ii) sale of grave sites;
 - (iii) transfer of grave sites, and
 - (iv) interments;
 - (e) the full name and address of the proprietor;
 - (f) particulars regarding the nature of the title under which the proprietor will hold or holds the land on which the cemetery is to be established or which is being used as a cemetery and whether such land is subject to any mortgage or trust, and
 - (g) a schedule of the burial fees proposed to be charged or actually in force.
- 48.3 Upon receipt of an application the Municipal Manager must cause to be inserted in one or more newspapers circulating within the municipal area a notice stating the nature of the application and specifying the date being not less than 14 (fourteen) days after the date of publication of such notice by which objections to the granting of an application may be lodged with the Municipality.
- 48.4 The Municipality may, upon receipt of the payment by the applicant of the prescribed fee and if satisfied after consideration of the application and any objections which may have been lodged that no interference with any public amenity, or nuisance or danger to the public health is likely to take place or arise as a result, in writing grant consent for the establishment of the proposed private cemetery or the continued use of the private cemetery as the case may be, referred to in the application, in accordance with the plans submitted and to any variation or amendment which it may require and to any conditions which it may impose.
- 48.5 No deviation from the approved plans is permitted without the prior approval of the Municipality.

- 48.6 No person may supply false or fraudulent information in the application contemplated in sub-section 48.2.

49. DUTIES OF PROPRIETORS

- 49.1 The proprietor of a private cemetery for which the consent of the Municipality has been obtained must –

- (a) comply with –
 - (i) any special conditions prescribed by the Municipality, and
 - (ii) the relevant provisions of these By-laws and any other applicable law;
- (b) keep a record which shows –
 - (i) the number of each grave site and the ownership of the site, and
 - (ii) the number of interments in each grave site and the name, age, gender, race, last known address, date and cause of death of the deceased;
- (c) maintain the grounds, fences, gates, roads, paths and drains in good order and condition and clearing of weeds and overgrowth;
- (d) provide for the identification of grave sites by subdividing the cemetery into blocks each containing a number of graves or grave sites, and
 - (i) each block must be demarcated by means of signs showing the number and situation of each block;
 - (ii) the graves of grave sites in each block must be separately numbered by means of durable number plates, and
 - (iii) all signs and number plates must be maintained in a neat and legible condition;
- (e) allow an official to enter or inspect the cemetery and all records kept in connection therewith;
- (f) render a monthly return to the Municipal Manager on or before the 7th (seventh) day in each month of all burials, which sets out –
 - (i) name, last known address, age, gender, race, date and cause of death of each deceased person interred in the cemetery;
 - (ii) name of the medical practitioner who issued the death certificate;
 - (iii) authority who issued the burial order;
 - (iv) block and grave site number;
 - (v) date of burial, and
 - (vi) particulars of a change in the identity of the caretaker or of a person newly appointed;

- (g) render an annual return to the Municipal Manager on or before the 31st day of March each year which contains a detailed list of the names and addresses of all trustees, committee members or persons controlling the cemetery, and
- (h) appoint a caretaker to manage the cemetery and to keep the records.

CHAPTER 10

MISCELLANEOUS

50. AUTHENTICATION AND SERVICE OF ORDER, NOTICE OR OTHER DOCUMENT

50.1 An order, notice or other document requiring authentication by the Municipality must be sufficiently signed.

50.2 Any notice or other document that is served on a person in terms of these By-laws is regarded as having been served –

- (a) when it has been delivered to that person personally;
- (b) when it has been left at that person's place of residence or business in the RSA with a person apparently over the age of 16 (sixteen) years;
- (c) when it has been posted by registered or certified mail to that person's last known residential or business address in the RSA and an acknowledgement of the posting thereof from the postal service is obtained;
- (d) if that person's address in the RSA is unknown, when it has been served on that person's agent or representative in the RSA in the manner provided by sub-section 50.2(a), 50.2(b) or 50.2(c);
- (e) if that person's address and agent or representative in the RSA is unknown, when it has been posted in a conspicuous place on the property or premises, if any, to which it relates, or
- (f) in the event of a body corporate, when it has been delivered at the registered office of the business premises or such body corporate.

50.3 Service of a copy shall be deemed to be service of the original.

50.4 Any legal process is effectively and sufficiently served on the Municipality when it is delivered to the Municipal Manager or a person in attendance at the Municipal Manager's office.

51. COMPLAINT

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

52. NOTICE OF COMPLIANCE AND REPRESENTATIONS

52.1 A notice of compliance served in terms of section 37 must state –

- (a) the name and residential and postal address, if either or both of these be known, of the person;
- (b) the nature of the state of disrepair;
- (c) sufficient detail to enable compliance with the notice, the measures required to remedy the memorial work;
- (d) that the person must within a specified time period take the measures to comply with the notice, to diligently continue with the measures, and to complete the measures before a specific date; and
- (e) that written representations, as contemplated in sub-section 52.3 may, within the time period stipulated under sub-section 52.2(d), be made to the Municipality at a specified place.

52.2 The Municipality, when considering any measure or time period envisaged in sub-sections 52.1(d), must have regard to –

- (a) the principles and objectives of these By-laws;
- (b) the state of disrepair;
- (c) any measures proposed by the person on whom measures are to be imposed, and
- (d) any other relevant factors.

52.3 A person may within the time period contemplated in sub-section 52.1(e) make representations in the form of a sworn statement or affirmation to the Municipality at the place specified in the notice.

52.4 Representations not lodged within the time period will not be considered except where the person has shown good cause and the Municipality condones the late lodging of the representations.

52.5 The Municipality must consider the representations and any response thereto by an authorised official or any other person, if there should be a response.

52.6 The Municipality may, on its own volition, conduct any further investigations to verify the facts if necessary, and the results of the investigations must be made available to the person, who must be given an opportunity of making a further response if he or she so wishes, and the Municipality must also consider the further response.

52.7 The Municipality must, after consideration of the representations and response, if there should be such a response, make an order in writing and serve a copy of it on the person.

52.8 The order must –

- (a) set out the findings of the Municipality;
- (b) confirm, alter or set aside in whole or in part, the notice of compliance, and
- (c) specify a period within which the person must comply with the order made by the Municipality.

52.9 If the notice of compliance is confirmed, in whole or in part, or is altered but not set aside, the Municipality will inform the person that he or she –

- (a) must discharge the obligations set out in the notice, or
- (b) may elect to be tried in court.

52.10 If the person elects to be tried in court, he or she must, within seven (7) calendar days, notify the Municipality of his or her intention to be so tried.

52.11 If the person does not elect to be tried in court, he or she must, within the prescribed manner and time, discharge his or her obligations under the order.

52.12 Where there has been no compliance with the requirements of the notice, the Municipality may take such steps as it deems necessary to repair the memorial work and the cost thereof must be paid to the Municipality in accordance with section 53.

53. COSTS

Should a person fail to take the measures required of him or her by notice, the Municipality may recover all costs incurred as a result of it acting in terms of sub-section 52.12 from the person.

54. CHARGES

Should a person fail to pay a prescribed fee, the Municipality may act in accordance with the provisions of its Customer Care and Revenue Management By-law (Local Authority Notice 224, Provincial Gazette Extraordinary No 1951, 5 July 2011).

55. LIMITATION OF LIABILITY

55.1 The Municipality is not liable for any damage or loss caused by –

- (a) the exercise of any power or the performance of any duty in good faith under these By-laws, or
- (b) the failure to exercise any power or perform any function or duty in good faith under these By-laws.

56. EXEMPTIONS

- 56.1 Any person may, by means of a written application, in which the reasons are given in full, apply to the Municipality for exemption from any provisions of these By-laws.
- 56.2 The Municipality 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.
- 56.3 An exemption does not take effect before the applicant has undertaken in writing to comply with all conditions imposed by the Municipality under sub-section 56.2, however, if an activity is commenced with before such undertaking has been submitted to the Municipality, the exemption lapses.
- 56.4 If any condition of an exemption is not complied with, the exemption lapses immediately.

57. LIAISON FORUMS IN THE COMMUNITY

- 57.1 The Municipality may establish one or more liaison forum(s) in a community for the purposes of –
- (a) creating conditions for a local community to participate in the affairs of the Municipality;
 - (b) encouraging a local community to participate in the affairs of the Municipality, and
 - (c) promoting the achievement of a healthy environment.
- 57.2 A liaison forum may consist of –
- (a) a member or members of an interest group, or an affected person;
 - (b) a member or members of a community in whose immediate area a cemetery exists;
 - (c) a designated official or officials of the Municipality, and
 - (d) the councillor responsible for cemeteries.
- 57.3 The Municipality may, when considering an application for consent, permit or exemption certificate in terms of these By-laws, where applicable, request the input of a liaison forum.
- 57.4 A liaison forum or any person or persons contemplated in sub-section 52.2 may, on own initiative, submit an input to the Municipality for consideration.

58. TRADITIONAL COUNCILS

The Municipality may, in the spirit of sections 20(1) and 24 of the Traditional and Khoi-San Leadership Act, 2019 (Act 3 of 2019), liaise with a traditional council regarding the implementation and enforcement of the provisions of these By-laws within the area of jurisdiction of such traditional council.

59. APPEAL

A person whose rights are affected by a decision of an official may, in terms of section 62(4)(b) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), appeal to the Municipality against a finding of the Municipal Manager.

60. OFFENCES AND PENALTIES

Any person who contravenes any provision of these by-laws shall upon conviction if found guilty of an offence be liable to a fine or in default of payment, to imprisonment for a period not exceeding six (6) months, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment.

61. REPEAL OF BY-LAWS

The Standard Cemetery By-laws, adopted by the Transvaal Board for the development of peri-urban areas and published by Administrator's Notice 638 of 19 August 1953, and which in terms of section 159 bis(1)(c) of the Local Government Ordinance, 1939, became the By-laws of the Town Council of Ellisras, as amended, are hereby repealed.

62. SHORT TITLE AND COMMENCEMENT

These By-laws is called Lephalale Local Municipality's Cemetery By-laws and commence on the date of publication thereof in the *Provincial Gazette*.


**SCHEDULE 1
(SUB-SECTION 9.2)**
LEPHALALE MUNICIPALITY
NOTICE OF FUNERAL

DATE

SURNAME OF DECEASED

FULL NAMES OF DECEASED

RESIDENTIAL ADDRESS

ID NUMBER OF DECEASED

DATE OF DEATH AND AGE

PLACE OF DEATH

DATE AND TIME OF FUNERAL

GRAVE NUMBER

CEMETERY

NAME OF UNDERTAKER

TRAFFIC ASSISTANCE

YES

☐

NO

☐

DETAILS OF GRAVE

6 FEET

☐

8 FEET

☐

RE-OPENING

☐

CHILD

☐

LARGER THAN NORMAL

☐

NAME, ADDRESS AND CONTACT DETAILS OF NEAREST RELATIVE:

SIGNATURE OF UNDERTAKER

○○○○○○○

FOR OFFICIAL USE ONLY

RESIDENT / NON-RESIDENT	:	_____
AMOUNT PAYABLE	:	_____
RECEIPT NUMBER	:	_____
DATE AND TIME RECEIVED	:	_____

**SCHEDULE 2
(SUB-SECTION 34.2)**

Ref no: 16/7/5

Address:

Letter no:

.....

.....

.....

Date:

The Municipal Manager
Lephalale Municipality
Private Bag X136
Lephalale
0557

Sir / Madam

**APPLICATION FOR APPROVAL TO ERECT MEMORIAL WORK IN THE MARAPONG/
ONVERWACHT / STEENBOKPAN / THABO MBEKI / RUPERT CEMETERY**

Herewith my application to erect memorial work in the cemetery as follows:

Surname of deceased:

Full name(s) of deceased:

Grave no:

Attached is a complete example of the proposed memorial work which indicates
measurements, material to be used as well as all relevant wording.

Proof of payment is also attached to this application.

Trusting that you will find the above in order.

Yours faithfully

Name of applicant:

Signature of applicant:

Contact no:

Email address:

**SCHEDULE 3
(SUB-SECTION 48.2)**

APPLICATION FORM FOR A PRIVATE CEMETERY

EXISTING FORM TO BE USED OR ADAPTED WHERE NECESSARY