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OVERSTRAND MUNICIPALITY

BY-LAW RELATING TO CEMETERIES 2022

1. DEFINITIONS

In this By-law, unless the context indicates otherwise—

"ashes" means the remains and end-product of a dead human body after cremation;

"burial" means the interment of a dead human body including the body of a still-born child or the ashes thereof in the earth or any other form of interment, and "bury" has a corresponding meaning;

"burial order" means an order issued in terms of the Births and Deaths Registration Act, 1992 (Act 51 of 1992), whereby authorization is granted for the burial or cremation of a dead human body;

"cemetery" means any piece of land within the area of jurisdiction of the Municipality and set apart for interment purposes of dead human bodies;

"corpse" means the dead body of a human being, including the body of a stillborn child;

"cremation" means the disposal of a corpse by means of incineration, and

"cremate" has a corresponding meaning;

"crematorium" means that section of a cemetery that is used for the cremation of corpses;

"headstone" means a commemorative stone erected on a berm;

"infill grave" means every second grave plot is used as a double depth grave with a single grave in between due to adverse soil conditions.

"interment" means burial or cremation or any other mode of disposal of a corpse;

"memorial" means any tombstone, monument, kerbing, bed and chips, plaque, and inscription on it, or other similar work erected or intended to be erected in any cemetery or crematorium to commemorate a deceased person;

"municipality" means—

- (a) the Overstrand Local Municipality, established in terms of section 12(1) of the Local Government Municipal Structures Act; or,
- (b) a service provider fulfilling responsibilities assigned to it in terms of section 81(2) of the Local Government Municipal Systems Act, or any other law;

"reservation certificate holder" means a person to whom the right to bury a corpse in a certain grave has been granted;

"stillborn", in relation to a child, means viable but having showed no sign of life at birth.

"unclaimed corpse" deceased persons with no known next of kin.

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2. ESTABLISHMENT

The Municipality may from time to time set apart for the purpose of a cemetery any piece of land within the Municipality's area of jurisdiction and may set apart separate areas for different religious denominations within a cemetery and may also establish a monument section and a berm section within a cemetery.

3. CONTROL

All the cemeteries which have been established or which may be established within the area of jurisdiction of the Municipality shall be under the control of the Municipality.

4. GENERAL

- 4.1 No person may inter a corpse or cause a corpse to be interred within the Municipality's area of jurisdiction, other than in a cemetery.
- 4.2 No body shall be interred in the earth in a cemetery within the Municipal area without permission of the Municipality.
- 4.3 Such permission shall not be granted unless an interment order in terms of the Births and Death Registrations Act 51 of 1992 replaced by No. 18 of 2010: Births and Deaths Registration Amendment Act, 2010, has been issued and produced to the responsible official.
- 4.4 The Municipality shall demarcate grave plots in accordance with an approved layout plan.
- 4.5 An interment register must be kept up to date at the offices of the Municipality.
- 4.6 Permission for interment will not be granted unless the relevant fees, as determined by the Municipality from time to time, have been paid.
- 4.7 Interments and public access times to cemeteries shall be determined by the Overstrand Municipality from time to time.
- 4.8 The Municipality may, if the case is one of emergency or the custom or conventions of a religious or cultural group, permit interment outside of the official times as determined by the Municipality.
- 4.9 No person may—
 - (a) enter or exit any cemetery except through the gates provided for that purpose; and
 - (b) enter any office or enclosed area in a cemetery except to undertake a lawful activity in accordance with the provisions of this By-law.
- 4.10 No person may place any articles outside of, or on, the sidewalks at a cemetery with the intention of trading.
- 4.11 No person may carry on any occupation or solicit any orders for any business, or exhibit, distribute or leave any business card or advertisement inside or outside a cemetery, except on sites specifically determined and set aside for that purpose.

- 4.12 No person may sit, stand, walk, or climb on or over any grave, memorial, gate, wall, fence or building in a cemetery.
- 4.13 No person may bring any animal or animal-drawn vehicle into a cemetery without the permission of the Municipality. Any animal found in a cemetery may be impounded or removed by the Municipality without rendering the Municipality liable to pay any compensation.
- 4.14 No person may—
- (a) wantonly destroy or damage or desecrate or cause to be destroyed or damaged or desecrated any grave, memorial, wall, building, fence, railing, path or other construction in a cemetery;
 - (b) place, draw or erect any advertisement, poster, or placard on any grave, memorial, wall, building, fence, railing, path, or other construction in a cemetery; or
 - (c) in any other way deface any grave, memorial, wall, building, fence, railing, path, or other construction in a cemetery.
- 4.15 No person may, unless expressly permitted to do so by this By-law or unless consent from the Municipality has been obtained—
- (a) disturb the soil in a cemetery;
 - (b) plant or uproot any plant, shrub or flower in a cemetery; or
 - (c) in any way interfere with any grave or construction in a cemetery.
- 4.16 No person may—
- (a) play any game or sport in a cemetery;
 - (b) discharge a firearm in a cemetery (except as a salute at a military funeral);
 - (c) discharge any air gun or catapult in a cemetery;
 - (d) disturb or annoy any person in a cemetery; or
 - (e) do anything which might disturb the peace or undermine propriety in a cemetery.
- 4.17 No person may—
- (a) obstruct, resist, or oppose any official of the Municipality in the course of the performance of his or her duties; or
 - (b) refuse to comply with any order or request that the Municipality may issue under these By-laws.

5. RESERVATION OF GRAVE PLOTS

- 5.1 No plot shall be reserved except a double depth plot in the name of the next of kin, or in the name of the person applying for the grave, and payment of fees has been made as determined by the Municipality.
- 5.2 The Municipality may on application by a religious denomination, and in the manner the Municipality deems fit, allocate in a cemetery a section of the cemetery or a piece of ground that the Municipality deems necessary for the interment of the corpses of people who belonged to that denomination or for a purpose that is, at the discretion of the Municipality.

6. INTERMENT

- 6.1 Except in urgent cases, an application for interment must be lodged at the Municipality at least two working days before the time set for such interment. If an interment will take place on the day after a public holiday or a weekend, the requirement of two working days' notice shall also apply.
- 6.2 No person shall, without prior permission of the Municipality, conduct a religious ceremony or service according to the rites of any denomination in any portion of any cemetery which has been reserved by the Municipality for the use of different denomination.
- 6.3 Where a grave of a greater depth, length, or width than that specified is required, application in respect thereof, together with payment of an extra fee (if applicable) shall be made when notice of burial is given.
- 6.4 All graves shall be prepared and backfilled by the family under the supervision of the Municipality and in conformity with the specifications applicable to ordinary graves.
- 6.5 The family or the representative of a deceased person will prepare the grave subject to the following conditions—
- (a) that an application for approval to prepare such grave be submitted to the Municipality at least two working days prior to the burial;
 - (b) that the prepared grave be inspected and approved by the responsible municipal official at least eight hours prior to the burial.
- 6.6 If unfavourable soil conditions such as sandy soil prevail, the family or representative of the family may request assistance from the Municipality with the preparation of the grave site.
- 6.7 In the case of double depth graves, no more than two bodies may be buried in such graves; provided further that the lid of the second coffin placed in the grave shall under no circumstances be less than 1 000 mm from the surface.
- 6.8 In the event of the reopening of the grave for the purpose of the interment of the second body, a layer of soil not less than 300 mm thick shall be left undisturbed above the first coffin placed in the grave.
- 6.9 If on the reopening of any grave the soil is found to be unsuitable, the reopening shall not be proceeded with, and the grave shall be refilled.
- 6.10 If it is necessary to remove a monument or other structure for the purpose of an interment, it shall be removed by the holder of the certificate of reservation in respect of such plot or by his duly authorized representative not less than two working days before the burial is to take place.
- 6.11 No person shall cause any vehicle, while in a cemetery, to leave the roads and all vehicles shall leave the cemetery as soon as possible after the funeral for which it was intended.
- 6.12 Every person taking part in a funeral procession or ceremony shall comply with the directions of the Municipality as to the route to be taken to and within the cemetery.

7. DIMENSIONS OF GRAVE PLOTS AND GRAVES

- 7.1 The excavation for a single grave for a deceased person of the age of twelve years or older shall measure 2160 mm in length and 800mm in width. The excavation of a double depth grave for a deceased person of the age of twelve years or over shall measure 2160mm in length and 800 mm in width.
- 7.2 The excavation for a single grave for a deceased person under the age of twelve years shall measure 1350 mm in length and 530 mm in width.
- 7.3 The covering soil shall not be less than 1000mm for both single and double depth graves and should two bodies be buried in the same grave, 300mm of soil coverage shall be maintained between the coffins.
- 7.4 The covering soil shall not be less than 1200mm for a single infill grave.

8. PROVISIONS RELATING TO MEMORIAL STONES OR MONUMENTS

- 8.1 No person shall bring or cause to be brought any material into any cemetery for the purpose of carrying out any work in connection with a memorial stone or brickwork or stonework upon any grave, and no person shall erect or place in position any tombstone, kerbing, or monument or any structure whatsoever on any grave, unless and until—
 - (a) the grave plot has been reserved in the name of the person authorizing such work;
 - (b) a drawing depicting dimensions and figures of the proposed work together with a specification of the material to be used, and a copy of any proposed epitaph or ornamentation have been furnished to the Municipality not less than three working days before it is intended to bring such material into the cemetery;
 - (c) all fees, determined by the Municipality, which are due in respect of such work have been paid;
- 8.2 The Municipality may refuse to approve any proposed work with regard to a memorial stone or monument, the plan and specification of which will in the opinion of the Municipality, disfigure the cemetery, or which bears any epitaph which may be offensive to other users of the cemetery or visitors to it.
- 8.3 No person shall convey any stonework or brickwork or monuments or any portion thereof within a cemetery upon any vehicle or truck not fitted with pneumatic tyres which will cause damage to the roads and grounds of the cemetery.
- 8.4 No person engaged in work with any memorial stone or monument shall at any time disturb any adjacent grave plot. The grave plot shall be left in a neat and tidy state on completion of the work to the satisfaction of a municipal official.
- 8.5 Any person carrying out any work in connection with any memorial stone or monument shall ensure that it is constructed in such a manner so as to be permanently stable and safe.
- 8.6 No person shall, without the Municipality's permission, bring any memorial stone or monument into a cemetery from twelve noon on a Friday until the opening hour on the following Monday.
- 8.7 Any person carrying out any work within a cemetery shall comply with all directions issued by the Municipality.

9. MAINTENANCE OF GRAVES

- 9.1 (a) Memorial stones or monuments erected upon any grave shall at all times be maintained in good order and conditioned by the holder of the reservation certificate in respect of such a grave.
- (b) If a memorial stone or monument is allowed to fall into a state of disrepair or constitutes a danger or disfigures the cemetery, the Municipality may, by written notice sent by pre-paid registered post to the holder of the reservation certificate at his / her last-known address, require of him / her to affect such repairs and/or maintenance as may be necessary.
- (c) Failure on the part of the holder of the reservation certificate to affect the required repairs and/or maintenance within one month of the date of such notice shall constitute a contravention of this By-law and the Municipality may have the repairs and/or maintenance affected or may have the memorial stone or monument removed, as it deems fit, the costs and expenses of which to be recovered from the holder of the reservation certificate.
- 9.2 A memorial stone or monument which is dismantled for the purpose of a further burial shall be either re-erected or removed from the cemetery by the holder of the reservation certificate within two months of date of such dismantling.
- 9.3 The Municipality shall not be liable for any loss of or damage to any memorial stone, monument or any article placed upon any grave plot which may occur at any time and from any cause whatsoever, nor for any compensation in respect of any memorial stone or monument repaired or removed by it in circumstances that made it necessary to do so.
- 9.4 No person shall without the prior written permission of the Municipality plant any tree, shrub, bush or any other plant on any grave plot, nor shall any such tree, shrub, bush or plant be planted upon any portion of such plot other than that indicated by the Municipality.
- 9.5 The Municipality shall have the right to remove, trim or prune any plant which extends beyond the boundaries of the grave plot upon which it is planted, or which is untidy.

10. FUNERALS FOR DESTITUTE PEOPLE

- 10.1 The removal and burial of the unclaimed corpse who has died within the area of jurisdiction of the District Municipality is the responsibility of the District Municipality if—
- (a) the pauper's corpse has not been claimed by a competent person; or
- (b) a competent person has undertaken to inter the corpse of the pauper but has not done so.
- 10.2 The corpses of more than one pauper may, at the discretion of the Municipality be interred in a single one grave.
- 10.3 In the case of the interment of the corpse of a pauper, the Municipality remains the reservation certificate holder.
- 10.4 In the case of the cremation of the corpse of a pauper, the Municipality must inter the ashes in an area specifically set aside for that purpose.

- 10.5 A person applying for the interment or cremation of the corpse of a destitute person must—
- (a) depose to an affidavit or be in possession of a letter from the relevant ward councillor to the effect that -
 - (i) the applicant is unable to pay for the interment or cremation; and,
 - (ii) the deceased person left no money or policy to pay for the funeral or cremation; and,
 - (b) submit the affidavit or signed letter from the relevant ward councillor, which must be to the satisfaction of the Municipality.
- 10.6 The Municipality reserves the right to refuse to inter or cremate the corpse of a pauper if the requirements set out in subsection (10.5) are not met.

11. PROCEDURES DURING A PANDEMIC

During a pandemic and a resultant declaration of a National State of Disaster by the government, all regulations with regard to the handling; transportation and final disposal of human remains must be done in accordance to Disaster Management Act and Regulations.

12. EXHUMATION OF HUMAN REMAINS

- 12.1 Human remains may be exhumed only if—
- (a) the Premier of the Western Cape or the Director of Public Prosecutions or a magistrate and the reservation certificate holder authorize the exhumation in writing;
 - (b) the authorization contemplated in subsection (a) is handed to the Municipality in advance;
 - (c) the family of the deceased person or the funeral director notifies the Municipality not less than 3 (three) working days in advance of the date and time proposed for the exhumation;
 - (d) a nominated Municipal official is present at the exhumation; and
 - (e) at least one member of the South African Police Service, who must be notified by the family of the deceased person or the funeral director, is present at the exhumation.
- 12.2 The Municipality may require that a screen be erected around the area where the exhumation is to take place so that members of the public are unable to view the exhumation.
- 12.3 The Municipality or the Municipality's contractor may only open a grave up to the level of the coffin lid, being the reopening level, but may not remove the remains.
- 12.4 Only members of the family of a deceased person shall be permitted to be present at the exhumation. If members of an organisation wish to attend an exhumation, the organisation must obtain the prior written consent of the Municipality at least three working days before the proposed exhumation, failing which they may be denied to be present at the exhumation.
- 12.5 All persons present at an exhumation must obey the instructions of the nominated Municipal official and any member of the South African Police Service.
- 12.6 If an exhumation for the removal of a corpse from a grave and the grave site takes place the reservation certificate holder retains his or her rights in respect of the grave if the corpse is to be returned to that grave. If the corpse is not to be returned to the same grave, the reservation certificate holder relinquishes his or her rights in respect of that grave, and the grave may be used again as the Municipality deems fit.

13. PROVISIONS RELATING TO PERSONS DYING OUTSIDE THE MUNICIPAL AREA

The provisions of this By-law shall apply mutatis mutandis to any burial within the Municipal area of the remains of any person who has died outside such area.

14. FEES PAYABLE

All fees payable in respect of burials shall be determined by the Municipality.

15. GENERAL REQUIREMENTS FOR MEMORIALS AND MEMORIAL WORK

15.1 The Municipality may provide—

- (a) buildings, niches or other facilities for the depositing and preservation of ashes for defined periods or in perpetuity upon such terms and conditions as may be determined by it;
- (b) facilities for memorial tablets upon such terms and conditions as may be determined by it.

15.2 All inscriptions on niches or memorial tablets of remembrance must comply with general standards of decency and propriety and must not cause offence to users of the cemetery or visitors to it.

15.3 A person may only—

- (a) open a niche containing ashes, or
- (b) remove an urn or casket containing ashes from a niche with the written consent of the Municipality, which consent will not be unreasonably withheld.

15.4 If ashes are to be buried in a grave in an urn or a casket or another type of container, such urn, cask, or container must be made from perishable material.

15.5 Only urns or caskets containing ashes may be deposited in a niche.

15.6 The Municipality or its employees will not be liable to members of the public for any damage to or theft from niches, urns, memorials, or any other embellishments under its control or on its grounds.

16. GENERAL PROVISIONS RELATING TO CEMETERIES

16.1 Every application and every document relating to any interment, whether by burial or cremation, must be—

- (a) furnished with a reference number from the official register;
- (b) filed in sequence; and
- (c) preserved by the Municipality.

16.2 All fees in respect of interments must be set out in the Municipality's tariff structure.

17. OFFENCES AND PENALTIES

Any person who contravenes or fails to comply with any provision of this By-law shall be guilty of an offence and on conviction be liable to a fine or to imprisonment or to both such fine and imprisonment.

18. SHORT TITLE AND COMMENCEMENT

This By-law is called the Overstrand Municipality By-law Relating to Cemeteries 2022.

This By-law will come into operation on the date when published in the Government Gazette.

