

Final Draft for consideration by Council



## CHAPTER 5

# Cemetery and Crematorium

KWADUKUZA



## KWADUKUZA MUNICIPALITY

### BYLAWS RELATING TO THE CEMETERY AND CREMATORIUM

The Kwadukuza Municipality in terms of section 156(2) of the Constitution of the Republic of South Africa Act 1996, (Act 108 of 1996) read with section 13 of the Local Government: Municipal Systems Act (Act 23 of 2000), publishes the bylaws as set forth hereafter as bylaws made by the Municipality which bylaws will come into effect on the first day of the month following the date of publication hereof.

#### 1. Definitions

In these bylaws the following words or terms shall be accorded the meaning herein respectively assigned to them, unless the context requires otherwise:

“Cemetery” shall have the meaning assigned to it in the Cemeteries and Crematoria Ordinance No. 39 of 1969 and shall include any land set aside for the burial of deceased natural persons.

“Curator” shall mean the person in charge of the cemetery and who shall be responsible for the due compliance by all persons with the requirements of these bylaws.

“medical Officer of Health” shall mean the person or persons appointed by the Municipality to act as medical Officer of Health or any person lawfully deputed to act in his stead and behalf.

“Municipality” means the Kwadukuza Municipal Council and includes the Mayor, Political Office Bearers, Political Structures, Municipal Manager and any Official who has delegated powers in terms of Section 59 of the Local Government Municipal Systems Act (Act 32 of 2000);

“Municipal Manager” means the person appointed in terms of Section 82 of the Local Government Municipal Structures Act 1998, (Act 117 of 1998);

“perpetuity” shall mean a period not exceeding fifty years from date of promulgation of these bylaws.

2. (a) The Municipality shall appoint a curator to care for, supervise and attend to all matters connected with the proper use and management of the cemetery. The Municipal Manager shall be the curator under these bylaws, unless and until the Municipality shall have made some other appointment.
- (b) No person shall keep any dead body or corpse in any room, building or other structure or in any place other than a mortuary or other similar



place appointed for the purpose without the written consent of the Municipality.

- (c) No person shall bury or dispose of any dead body or corpse in any unauthorised place.

### **3. Reservation of Graves**

Any person resident within the area wishing to have a burial plot or plots reserved to himself and his heirs for the burial therein of such person or persons, as he or they may authorise, shall make application to the curator. The curator may grant or refuse any such application or indicate another plot or other plots which he is prepared to reserve in place of any applied for.

No plot reserved shall be disposed of to any other person without the consent of the curator and interment in any such plot shall be in conformity with these bylaws.

### **4. Burial Permits**

Any person requiring to bury the body of a deceased person in any lawfully established cemetery vested in the Municipality, shall make application to the curator for a plot, and no person shall dig any grave or appropriate or attempt to appropriate any grave plot therein until he shall have obtained from the said curator a permit authorising him so to do. Every such application must be made at least twelve hours before the time appointed for burial and must contain the name, sex, age, nationality and late residence of the deceased, the time of the proposed burial, the grave lot required and must be accompanied by a burial order as prescribed by law.

### **5. Death Certificate**

No dead body shall be buried or interred in the cemetery or cremated in a crematorium until a burial certificate signed by a duly qualified officer of the law shall have been deposited with the curator or other person in charge of such cemetery.

### **6. Cemetery Register**

The curator shall keep a true and faithful register of all burials made within such cemetery and or cremations done. Such register shall be open to any person upon application and shall disclose all reasonable information regarding such deceased persons and shall indicate where and when buried.



**7. Cemetery Plan**

In respect of the cemetery there shall, in addition to a burial register, be provided and exhibited in the office of the curator, a plan or diagram of the cemetery, showing all grave plots that have been filled or otherwise dealt with.

**8. Graves**

The curator shall, in all cases, arrange for the opening and closing of all graves in the manner and under the terms hereinafter provided, and no person, save a recognised undertaker having the written consent of the curator, shall open or close any grave in the cemetery.

**9. Burial Hours**

No burial shall take place in the cemetery between the hours of sunset and sunrise, except for special reasons and with the consent of the curator, who shall record the reasons in the register provided in Section 6.

**10. Depth of Graves**

No grave shall be less than 2m in depth and no body shall be nearer the surface of the ground than 1.25m. Not more than two bodies shall be placed in one grave unless the first opening of the grave was at such depth that no body shall be nearer the surface of the ground than 1.25m.

**11. Interment of Another Body**

No grave shall be re-opened for the interment of another body unless the Medical Officer of Health is satisfied that such reopening can be carried out without danger to the public health.

**12. Burial Vaults**

Every person who, in any part of the cemetery, causes a vault to be built for use as a burial place, shall, at his own expense, cause the vault to be enclosed with walls constructed of good brick or stone, properly bonded and solidly put together with good cement mortar, and with walls of a thickness of 225mm at least.

**13. Opening of Vaults**

Every person who, in any part of the cemetery, buries a dead body in a vault shall, at his own expense, open such vault and, after deposit of the coffin containing such body, immediately cause the coffin to be wholly and

permanently enclosed, in a separate cell or receptacle, which shall be constructed of good brick work or other suitable material, properly jointed in cement, and in such manner as to prevent, as far as practicable, the escape of noxious gas from the interior of the cell or receptacle, and which shall be left permanently undisturbed or alternatively at the option of the next-of-kin of the deceased, the same object may be effected by a hermetically sealed coffin without such particular enclosing wall.

**14. Exhumations**

Subject to the provisions of national or provincial legislation no body or remains of a body shall be exhumed without the consent of the curator, which shall only be given upon introduction to him of an order granted by proper authority. Save in cases where exhumation is necessary in the interests of justice, the curator shall first ascertain that a medical practitioner is satisfied that exhumation may be carried out without danger to the public health.

**15. Re-opening of Graves**

No grave within the cemetery, wheresoever situated shall be re-opened whenever it shall appear to the Medical Officer of Health that the re-opening of such grave is likely to be attended with danger to the public health.

**16. Funerals**

Every person conveying a dead body or having charge of a dead body being conveyed to the cemetery shall convey such body in an orderly and proper manner and in a proper coffin or other decent and sufficient covering.

**17. Burial Service**

The person having charge of the funeral shall make arrangements for the performance of any desired religious ceremony or rites to be made at the time of burial in the cemetery.

**18. Permission to erect stones**

Plans of all stones, monuments, tablets and other erections or works which any person may desire to erect in the cemetery shall first be submitted to the curator for approval and no person shall erect or place any stone, monument, tablet or erection or work on any grave without such approval.

**19. Curator to supervise**

The erection of all monuments, headstones or other erections shall be under the direction of the curator, due cognisance being taken of the stipulations laid down in bylaw 41.

**20. To be kept in repair**

All monuments, tablets, grave stones, fencing and other erections shall be kept in good repair by the persons who erected them, and the Municipality may call upon such persons thereof to repair or remove any erection deemed to be in a state of unsightly disrepair, and if such persons fail or be unknown the Municipality may, after an interval of three months, itself remove such monument, tablet, grave stone, fencing and other erection.

**21. Re-erection of stone**

If a monument, tablet, grave stone or other erection has to be removed to permit of the burial of a second body for any other purpose the persons who removed such object or objects shall cause whatever was so removed to be replaced on the site, within a period of three months and if he shall fail to do so, the Municipality may, without notice remove such monument, tablet, grave stone, fencing or other erection out of the cemetery.

**22. Tidiness**

All monuments, tablets, grave stones, fencing and other erection shall be kept in good repair by the persons who erected them, and the Municipality may call upon the persons who erected them thereof to repair or remove any erection deemed to be in a state of unsightly disrepair, and, if he fails to do so or be unknown, the Municipality may, after an interval of three months, itself remove such monument, tablets, grave stone, fencing and other erection and recover the cost of so doing from the owner, if known.

**23. No trees may be planted**

No person shall plant on any grave site any tree or shrub without the consent of the curator, and such officer (or other authorised official) may prune, cut down or dig up and remove any shrub, plant or flower at any time when, in their opinion, the same has become unsightly or overgrown or when necessary for the purpose of allowing the grave to be again used.



**24. No "Works" in cemetery**

All head stones, monuments, railings, kerbing or other grave fittings to be erected in the cemetery must be brought into the cemetery in a state prepared and ready for fitting.

**25. No stone may be removed**

No head stone, monument, railing, kerbing or other erection or fittings shall be removed or taken out of the cemetery without the consent of the curator.

**26. Nuisances**

No person shall, in cleaning any grave, deposit or throw the grass, weeds or other material cleaned off the grave on to any adjoining or other lot or on to any road or path or on to any vacant land, but must entirely remove the same or place the grass, weeds or materials into such receptacles or places as shall be provided for the purpose.

**27. No workman's debris**

In the erection of monuments, tombstones, kerbing, the building of vaults or any other work of similar nature, the person engaged in such work, shall on the completion thereof, clear up the ground or grave on which he shall have been employed by removing away all spare soil, stone, chipping or other materials or debris and leave the cemetery clean and tidy.

**28. Alignment of railings**

Every person, in erecting or placing any kerb, railing or other enclosing work, shall enclose the grave lot so as to secure uniformity and straightness of kerbing and railings. Any person who shall, in carrying out any such work, encroach on any road, path or adjoining ground or grave lot shall, on being required by the Municipality, remove such encroachment, and if he fails to do so in the time specified in the notice the whole of the work may be removed by the Municipality and the person by whose act or default such encroachment may have been done or allowed to continue shall be liable to be proceeded against for a breach of these bylaws.

**29. Beacons**

No person shall remove or tamper with any block or grave peg or mark unless such is necessary in connection with any work, and such removal shall be done only with the consent of the curator.



**30. Neglected Graves**

No person shall leave any vase or other receptacle containing water on any grave so as to permit larvae of mosquitoes developing therein, and the curator is hereby authorised to remove any vase or receptacle in which he may find larvae of mosquitoes and also any broken, dilapidated or unsightly wreaths, vases or receptacles.

**31. Dogs**

No person shall take any dog or other animal into or permit any dog or other animal to enter the cemetery or any portion thereof.

**32. Wilful Damage**

No person shall, in any part of the cemetery, wilfully damage, destroy or disfigure any fence, tree, plant, seat, road, grave, tablet, inscription, monument or grave stone or do any other wilful damage or disfiguration therein or to any part of the outside thereof.

**33. Disturbance**

No person shall in any part of the cemetery, cause any disturbance or commit any indecent or obscene act or interfere with any other person by an improper act, word or gesture or make use of any foul, profane or obscene language or commit a nuisance or be drunk or do any act of thing likely to provoke a breach of the peace or tend to the hurt or annoyance of persons lawfully using or frequenting the cemetery or taking part in any religious rite therein.

**34. To enter by gates**

No person shall enter or leave or seek to enter or leave the cemetery otherwise than through the gates or entrances constructed and provided for that purpose.

**35. Sport Forbidden**

No person shall, in the cemetery, play at any game or throw or discharge any stone, stick or missile or discharge any firearm (except when forming part of a firing party at a military funeral) or any air-gun, catapult or other instrument, or endeavour to trap or pursue any bird or animal; provided, however, that the curator may take all proper measures for capturing or destroying any animal which may cause damage in the cemetery.



### **36. Hours of Admission**

The cemetery shall be open to the public between the hours of seven in the morning until 17h00, and no person shall enter or be in the cemetery except by permission of the curator at any time during which it shall be closed to the public.

### **37. Vehicles**

- (1) No person shall take into any cemetery any carriage, cart or other vehicle whether drawn by horse or otherwise, otherwise than a hearse or other vehicle conveying a dead body or (with the prior consent of the curator) a cart or other vehicle legitimately required for the purpose of administration of such cemetery or for the conveyance of any head stone or other stone or materials for the erection of any approved monument or memorial or other approved structure.
- (2) The foregoing provision is not applicable to vehicles used for the conveyance of aged and/or infirm persons.

### **38. Demarcation of Graves**

Every person having any grave plot in the cemetery shall enclose or otherwise properly define such lot, and the curator, council or trustees, as the case may be, shall not be liable for any mistake which may arise in consequence of the absence of such enclosure or mark defining such grave plot nor shall any interment therein inadvertently made be liable to interference.

### **39. Offences and Penalties**

**Any person who:**

- (a) wilfully conceals any facts or documents in connection with an application for interment;
- (b) makes any false statement in his/her written application for interment;
- (c) contravenes any provision of these bylaws or who fails to comply with the requirements thereof shall be guilty of an offence and upon conviction shall be liable to the fines determined by a Chief Magistrate of the Magistrate's Court with jurisdiction in the area in which the offence has been committed or imprisonment as determined by a competent court.



#### 40. Tariff

The fees and charges as set out in the tariffs of charges shall be payable to the Municipality and shall be paid to the Chief Financial Officer at the time of giving burial notice or upon application for the reservation of burial plots, or for exhumation, or for the erection of monuments etc. or for cremation, as the case may be.

#### 41. Dimensions of graves

(1) The dimensions of every grave plot demarcated and designed as such shall be as follows:

- (a) Adults – Single Lots:
  - (i) Size of Lot: 2.5m x 1.5m;
  - (ii) Maximum size of ornamentation (external measurements)  
2.5m x 1.5m;
  - (iii) Maximum width of kerbstone: 150mm
- (b) Adults – Double Lots  
Not more than the size of two single lots.
- (c) Family Lot:  
Multiple of single grave lots.
- (d) Children:
  - (i) Size of Lot: 1.5m x 1m;
  - (ii) Maximum size of ornamentation (external measurements)  
1.5m x 1m;
  - (iii) Maximum width of kerbstone : 150mm

(2) The height of the headstones shall be limited to a maximum of 750mm.



**42. Cemeteries exempted from provisions of these bylaws**

- (1) The provisions of these bylaws, shall not apply to any cemetery or section of a cemetery which –
- (a) has been set aside by the Municipality for the interment of deceased persons who were members of any religious faith; and
  - (b) is operated and controlled by authorities of any religious faith.

The authorities operating and controlling a cemetery as contemplated in subsection (1)(b), shall be liable to pay to the Municipality the appropriate charges prescribed.

**43. Repeal of bylaws**

All Municipal Bylaws, and amendments thereto, relating to Cemetery and Crematorium made by the local authorities of Nkwazi/Zinkwazi Beach Transitional Local Council, KwaDukuza/ Stanger Transitional Local Council and Dolphin Coast Transitional Local Council, disestablished in terms of Provincial Notice No. 345 of 2000 in terms of section 12 of the Local Government: Municipal Structures Act, 1998: Establishment of Municipalities 9DC 29, KZ 291, KZ 292, KZ 293, KZ 294) as published on 19 September 2000, are hereby repealed.