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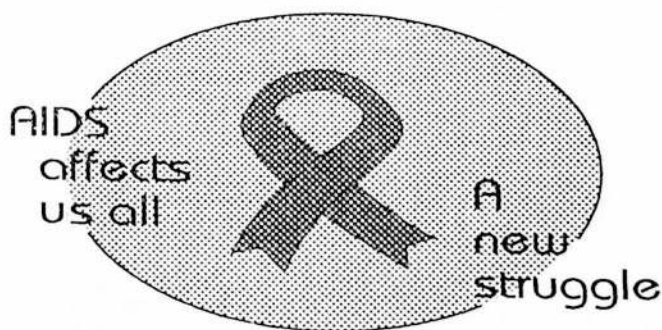
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Vol. 12

BISHO/
KING WILLIAM'S TOWN, 4 NOVEMBER 2005

No. 1448
(Extraordinary)

We all have the power to prevent AIDS



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LOCAL AUTHORITY NOTICES

NOTICE 174 OF 2005

BUFFALO CITY MUNICIPALITY

BY-LAW ON WASTE MANAGEMENT

I, Mxolisi Tsika, the Buffalo City Municipality Manager hereby publish in terms of Section 13 of the Local Government Municipal Systems Act 2000 (Act No. 32 of 2000) read with Section 162 of the Constitution of the Republic of South Africa Act 1996 (Act No. 108 of 1996) the By-Law relating to Waste Management.

PURPOSE OF THE BY-LAW

The purpose of this By-Law is to regulate management of waste in terms of:

1.
 - (a) The regulation of the collection, disposal and recycling of waste;
 - (b) The regulation of the provision of Council services by service providers and commercial services by licensees;
 - (c) Enhancing sustainable development; and
 - (d) The economical, effective and efficient management of waste;
 - (e) Endeavour to ensure that local communities are involved in the development of integrated waste management plans;
 - (f) Endeavour to minimize the consumption of natural resources;
 - (g) Promote the recycling and reuse of waste;
 - (h) Encourage waste separation to facilitate re-use and recycling;
 - (i) Promote the effective resourcing, planning and delivery of Council services and commercial services;
 - (j) Endeavour to achieve integrated waste planning and services on a local basis;
 - (k) Promote and ensure environmentally responsible Council services and commercial services;
 - (l) Endeavour to ensure compliance with the provision of this By-Law; and
 - (m) Endeavour to educate the local communities on the contents of this By-Law and in particular, on the benefits of recycling and waste minimization.

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CHAPTER 1

INTERPRETATION, PRINCIPLES AND OBJECTS

1. **Definitions.**— In this By-law, unless the context indicates otherwise –

"Affected person" means a person who has been issued, or who is being issued, with an enforcement notice;

"Approved", in the context of bins, bin liners, containers, receptacles and wrappers means approved by the council or service provider for the collection and storage of waste;

"Authorised official" means an official authorised by the council for purposes of this By-law to perform and exercise any or all of the functions and powers specified in, and subject to the provision of any other law;

"Bill of Rights" means chapter 2 of the Constitution;

"Bin" means an approved receptacle for the storage of less than 1,5 cubic metres of waste which may be supplied by the council or service provider to premises in terms of this By-law;

"Bin liner" means an approved loose plastic or other suitable material liner for use in the interior of a bin;

"Building waste" includes all waste produced during the construction, alteration, repair or demolition of any structure, and includes building rubble, earth, vegetation and rock displaced during such construction, alteration, repair or demolition;

"Bulky waste" means business waste or domestic waste which by virtue of its mass, shape, size or quantity is impractical to remove in the routine door-to-door council service provided by the council or service provider;

"Business waste" means waste, other than hazardous waste, healthcare risk waste, building waste, industrial waste, garden waste, bulky waste and special industrial waste, generated on premises used for non-residential purposes;

"Commercial services" means any service, excluding council services, relating or connected to accumulating, collecting, managing, recycling, sorting, storing, treating, transporting, disposing, buying or selling of waste or any other manner of handling waste;

"Constitution" means the Constitution of the Republic of South Africa, Act 108 of 1996;

"Container" means an approved receptacle having a capacity greater than 1,5 cubic metres for the temporary storage of waste in terms of this By-law;

"Council" means –

- (a) The municipal council of the Buffalo City Municipality established in terms of Part 7 of the Section 12 Notice (Provincial Notice Number 80 of 2000) issued by the Member of the Executive Council for Housing, Local Government and Traditional Affairs: Eastern Cape Province ('the MEC') by virtue of the powers vested in him by Section 12(1) as read with Section 14(2) of the Local Government: Municipal Structures Act 117 of 1998; which in terms of Section 14(1) of the Notice becomes the successor in law of the disestablished municipalities listed in Section 11(1) of the Notice comprising the erstwhile municipalities of East London, King William's Town and areas previously under the jurisdiction of the Amatola District Council, or its successor in title, and any committee or person to which or whom an instruction has been given or any power has been delegated or sub-delegated in terms of, or as contemplated in, section 59 of the Systems Act or, where the context so requires, means the aforesaid Buffalo City Municipality; or
- (b) A service provider in respect of any power, function or duty of the Council as contemplated in paragraph (a), assigned by it for the purpose of this By-law to that service provider in terms of section 81(2) of the Systems Act.

"Council services" means a municipal service relating to the collection of waste, including domestic waste, business waste and dailies, provided exclusively by the council or service providers in accordance with the provisions of the Systems Act and Chapter 6 of this By-law, and which in the case of business waste extends only to waste deposited in bin liners, bins and 240 litre wheeled bins;

"Damage to the environment" means any pollution, degradation or harm to the environment whether visible or not;

"Dailies" means putrescible waste generated by hotels, restaurants, food shops, hospitals, and canteens that must be collected on a more frequent basis, normally a daily basis, to prevent the waste from decomposing and presenting a nuisance, environmental or health risk;

"Domestic waste" means waste generated on premises used solely for residential purposes and purposes of public worship, including halls or other buildings used for religious purposes, but does not include business waste, building waste, garden waste or bulky waste;

"Dump" means placing waste anywhere other than an approved receptacle or a place designated as a waste handling facility or waste disposal facility by the council or service provider;

"DWAF" means the National Department of Water Affairs and Forestry;

"Enforcement notice" means a notice issued by an authorised official under section 44 of this By-law;

"Environment" means the surroundings within which humans exist, made up of—

- (a) The land, water and atmosphere of the earth,
- (b) Micro-organisms, plant and animal life,
- (c) Any part or combination of (a) and (b) and the interrelationships among and between them, and
- (d) The physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being;

"Environmental emergency" means any unexpected or sudden occurrence that may cause or has caused serious harm to human health or damage to the environment, regardless of whether the potential for harm or damage is immediate or delayed;

"Firm" includes any juristic person or association of persons established or operating in the Republic of South Africa;

"Garden waste" means waste generated as a result of normal domestic gardening activities, including grass cuttings, leaves, plants, flowers and other similar small and light organic matter, but does not include tree branches with a diameter thicker than 40 mm at any point of its length, bulky waste, building waste or any waste generated as a result of garden service activities;

"Garden service" means the provision of gardening services by a licensee including the cutting of grass, pruning of trees or any other horticultural activity including landscaping, to any domestic, business, commercial or industrial premises;

"Garden waste handling facility" means a waste handling facility that receives and temporarily stores garden waste or any other recyclable waste;

"Hazardous waste" means waste containing or contaminated by poison, a corrosive agent, a flammable substance having an open flash-point of less than 90 degree celsius, an explosive, radioactive material, a chemical or any other waste that has the potential even in low concentrations to have a

significant adverse affect on public health or the environment because of its inherent toxicological, chemical and physical characteristics;

"*Health care risk waste*" means all hazardous waste generated at health care facilities such as hospitals, clinics, laboratories, medical research institutions, dental and medical practitioners and veterinarians;

"*Industrial waste*" means waste generated as a result of manufacturing, maintenance, fabricating, processing or dismantling activities, but does not include building waste, business waste, dailies, special industrial waste, hazardous waste, health care risk waste or domestic waste;

"*Land reclamation*" means the planned and engineered disposal of inert or other appropriate waste for the purpose of constructing any facility or changing the natural features of any piece of land;

"*Level of service*" means the frequency of the council service and the type of service point;

"*Licensee*" means any person who has obtained a licence in terms of Chapter 7 of this By-law;

"*Litter*" means any object or matter which is discarded by a person in any place except in an approved receptacle provided for that purpose or at a waste handling facility or waste disposal facility;

"*Local community*" in relation to the council means that body of persons comprising –

- (a) The residents of the municipality,
- (b) The ratepayers of the municipality,
- (c) Any civic organisations and non-governmental, private sector or labour organisations or bodies which are involved in local affairs within the council, and
- (d) Visitors and other people residing outside of the municipality who, because of their presence in the municipality, make use of services or facilities provided by the council;

"*Nuisance*" means any injury, harm, damage, inconvenience or annoyance to any person, which is caused in any way whatsoever by the improper handling or management of waste, including but not limited to, the storage, placement, collection, transport or disposal of waste or by littering;

"*Occupier*" includes any person in actual occupation of the land or premises without regard to the title under which he occupies, and, in the case of premises let to lodgers or various tenants, includes the person receiving the

rent payable by the lodgers or tenants whether for his own account or as an agent for any person entitled thereto or interested therein;

"Owner" includes any person that has the title to any premises or land or any person receiving the rent or profits of any land or premises from any tenant or occupier thereof, or who would receive such rent or profits if such land or premises were let, whether for his own account or as an agent for any person entitled thereto or interested therein: Provided that the "owner" in respect of the premises on the Sectional Title Register opened in terms of section 12 of the Sectional Titles Act, 1986 (Act 95 of 1986), means the body corporate as defined in that Act, in relation to such premises;

"Person" means natural person or firm and includes licensees;

"Pollution" means any change in the environment caused by –

- (a) Substances; or
- (b) Noise, odours, dust or heat, emitted from any activity, including the storage or treatment of waste or substances, construction and the provision of services, whether engaged in by any person or an organ of state,

Where that change has an adverse effect on human health or well-being or on the composition, resilience and productivity of natural or managed ecosystems, or on materials useful to people, or will have such an effect in the future;

"Premises" means an erf or any other portion of land, including any building thereon or any other structure utilised for business, industrial or residential purposes;

"Prescribed fee" means a fee determined by the council by resolution in terms of section 10G(7)(a)(ii) of the Local Government Transition Act, 1993 (Act 209 of 1993), or any other applicable legislation;

"Public place" includes any public building, public road, overhead bridge, subway, foot pavement, footpath, sidewalk, lane, square, open space, garden, park, enclosed space vested in a council, and any road, place or thoroughfare however created which is in the undisturbed use of the public or which the public has the right to use or the right to access;

"Public road" means any road, street or thoroughfare or any other place (whether a thoroughfare or not) which is commonly used by the public or any section thereof or to which the public or any section thereof has a right of access and includes –

- (a) The verge of any such road, street or thoroughfare;

- (b) Any bridge, ferry, or drift traversed by any such road, street or thoroughfare; and
- (c) Any other work or object forming part of or connected with or belonging to such road, street or thoroughfare;

"Radioactive material" means any substance consisting of, or containing, any radioactive nuclide, whether natural or artificial;

"Radioactive waste" means any radioactive material which is or is intended to be disposed of as waste;

"Recyclable waste" means waste which has been separated from the waste stream, and set aside for purposes of re-use, reclamation or recycling;

"Resident" means in relation to a council a person who is ordinarily resident in the Municipality;

"Road reserve" means that portion of a road, street or thoroughfare improved, constructed or intended for vehicular traffic which is between the edges of the roadway or that portion of a road, street or thoroughfare, including the sidewalk, which is not the roadway or the shoulder;

"Service delivery agreement" means an agreement between the council and a service provider in terms of which the service provider is required to provide council services;

"Service provider" means any person who has entered into a service delivery agreement with the council in terms of the Systems Act;

"Special industrial waste" means waste consisting of a liquid, sludge or solid substance, resulting from a manufacturing process, industrial treatment or the pre-treatment for disposal purposes of any industrial or mining liquid waste, which in terms of the council's drainage or sanitation By-laws may not be discharged into a drain or sewer;

"Structures Act" means the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

"Sustainable development" means the integration of social, economic and environmental factors into planning, implementation and decision-making so as to ensure that development serves present and future generations;

"Systems Act" means the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);

"Target" means any desired air, water quality or waste standards contained in any legislation;

"*Tariff*" means the user charge for the provision of council services, determined and promulgated by the council or adjusted by a service provider in terms of Tariff Policy by-laws adopted under section 75 of the Systems Act;

"*Waste*" means any undesirable or superfluous matter, material, by-product or residue of any process or activity that has been discarded, accumulated or stored for the purpose of discarding, reuse, reclamation or recycling. Waste products may be liquid or solid and may include products that contain a gaseous component and may originate from domestic, commercial or industrial activities, but does not include –

- (a) Matter processed as part of sanitation services under the Water Services Act (Act 107 of 1997);
- (b) Any gas or gaseous product which may be regulated by national or provincial legislation; or
- (c) Any radioactive material save where this By-law specifically permits it to be handled;

"*Waste disposal facility*" means any facility or site which receives waste for disposal thereof, and which is operated in terms of a permit obtained from DWAF or any other competent authority or where such a facility is an incinerator, registration or such permission as is required by law, and includes garden waste handling facilities;

"*Waste generator*" means any person or firm that generates or produces waste;

"*Waste handling facility*" means any facility that accepts, accumulates, handles, recycles, sorts, stores or treats waste prior to its transfer for incineration or final disposal;

"*Workplace*" means any place within the municipality on or in which or in connection with which, a person undertakes council services or commercial services; and

"*Wrapper*" means a plastic or other suitable or approved material covering that totally encloses bales or slugs of compacted waste.

2. Principles –

- (1) The council has the responsibility to ensure that all waste generated within the municipality is –
 - (a) Collected, disposed of or recycled in accordance with this By-law; and

- (b) That such collection, disposal or recycling takes account of the waste management hierarchy set out in subsection (2) below.
- (2) The underlying principle of this By-law is to establish a waste management hierarchy in the following order of priority:
 - (a) Avoidance, waste minimisation and waste reduction;
 - (b) Re-use;
 - (c) Recycling, reprocessing and treatment; and
 - (d) Disposal.
- (3) Any official involved in the application of this By-law must, as far as reasonably possible, take into account the hierarchy referred to in subsection (2).

3. Main objects.

- (1) The main objects of this By-law are –
 - (a) The regulation of the collection, disposal and recycling of waste;
 - (b) The regulation of the provision of council services by service providers and commercial services by licensees;
 - (c) Enhancing sustainable development; and
 - (d) The economical, effective and efficient management of waste.
- (2) In pursuing the main objects of this By-law the council must –
 - (a) Endeavour to ensure that local communities are involved in the development of integrated waste management plans;
 - (b) Endeavour to minimise the consumption of natural resources;
 - (c) Promote the recycling and reuse of waste;
 - (d) Encourage waste separation to facilitate re-use and recycling;
 - (e) Promote the effective resourcing, planning and delivery of council services and commercial services;
 - (f) Endeavour to achieve integrated waste planning and services on a local basis;

- (g) Promote and ensure environmentally responsible council services and commercial services;
- (h) Endeavour to ensure compliance with the provisions of this By-law; and
- (i) Endeavour to educate the local communities on the contents of this By-law and in particular, on the benefits of recycling and waste minimisation."

4. Duty of care

- (1) Every person has a duty to manage any waste generated by his activities or the activities of those persons working under his direction in such a manner that the waste does not cause harm to human health or damage to the environment. In particular –
 - (a) No person may engage in council services or commercial services in a manner that results in, or creates a risk of harm to human health or damage to the environment, except insofar as such risk of harm or damage is an unavoidable aspect of the council services or waste management service and has been authorised by the council; and
 - (b) Every person who generates waste or engages in council services or commercial services must take all reasonable measures to prevent any other person from contravening subsection (1) (a) above in relation to that waste.
- (2) Without limiting its generality, subsection (1) applies to an owner of land, premises or equipment, a person in control of land, premises or equipment or a person who has a right to use the land, premises or equipment on which or in which –
 - (a) Any activity or process is or was performed or undertaken; or
 - (b) Any other situation exists, which causes, or is likely to cause, harm to human health or damage to the environment.
- (3) Any person subject to the duty imposed in subsection (1) may be required by the council or an authorised official to take measures to ensure compliance with the duty.
- (4) The measures referred to in subsection (3) that a person may be required to undertake include –

6. Scope, preparation and amendment of the integrated waste management plan

- (1) The integrated waste plan includes but is not be limited to the following matters:
- (a) Population and development profiles within the council;
 - (b) An assessment of all significant sources and generators of waste within the council;
 - (c) An assessment of the quantities and classes of waste currently generated and projected to be generated within the council;
 - (d) An assessment of the existing markets, council services, commercial services and waste handling and waste disposal facilities for each waste category;
 - (e) An assessment of the existing options for waste reduction, management and disposal within the council;
 - (f) An assessment of the number of persons within the council who are not receiving council services and proposed strategies and targets for providing these services to such persons;
 - (g) Proposed strategies and targets for managing and reducing waste in the council and for the efficient disposal of waste that cannot be re-used or recycled;
 - (h) Strategies for waste education and initiatives for separating waste at its source;
 - (i) Strategies for raising awareness of waste management issues;
 - (j) Strategies for establishing the information system as required in section 7;
 - (k) An implementation programme that identifies the required time-frames, resources and responsibilities for achieving these strategies and targets;
 - (l) A mechanism for monitoring performance in light of these targets and strategies;
 - (m) Current and anticipated waste collection, transportation, transfer and disposal costs;

- (n) A consideration of how the integrated waste management plan relates to other relevant plans of the council; and
 - (o) Such other matters as may be required by any other legislation, regulation or guidelines.
- (2) In preparing the integrated waste management plan, the council must:
- (a) Take into consideration any integrated development plan or land development objectives of the council, and the requirements of any national or provincial legislation or policy;
 - (b) Consult with the local community, as required by the Systems Act;
 - (c) Take reasonable steps to bring its draft integrated waste management plan to the notice of the local community by inviting comment thereon from members of the local community. Not less than two months must be allowed for submitting such comments, and the finalisation of the integrated waste management plan must be after considering any comment received from the local community;
 - (d) Send copies of the draft integrated waste management plan to the Minister of Environmental Affairs and the Minister of Water Affairs and Forestry, and neighbouring Municipalities for their information; and
 - (e) Send a copy of the draft integrated waste management plan to the Eastern Cape Provincial Government for comment and finalise the integrated waste management plan after considering such comment.
- (3) The council may amend the integrated waste management plan from time to time and must review the plan at least every five years. Such amendments or reviews must be conducted in consultation with the local community.
- (4) The council must publish a report once a year on the implementation of the plan. The report must include –
- (a) A description of activities and measures taken to achieve the objects of the plan;
 - (b) An indication of whether the objects of the plan are being achieved, and if not, an explanation of problems which have undermined the achievement of the objects;
 - (c) Details of convictions under this By-law; and

- (d) A description of significant incidents of dumping.

Part II: Information System

7. Establishment of an information system –

- (1) The council must establish and maintain an information system which records how waste is managed within the council.
- (2) The information system may include any information relating to or connected to the management of waste within the council.
- (3) Details regarding the implementation of the information system will be set out in the integrated waste management plan referred to in section 5.
- (4) The local community is entitled to reasonable access to the information contained in the information system, subject to any limitations imposed by law. In giving effect to this right, the council must –
 - (a) At the request of a member of the local community, provide information contained in the information system;
 - (b) Take steps to ensure that the information provided is in a format appropriate for lay readers; and
 - (c) May impose a fee for providing such information in order to cover the cost of providing the information requested.

8. Purpose of the information system

- (1) The purpose of the information system is for the council to –
 - (a) Record data relating to the implementation of the integrated waste management plan and the management of waste in the council;
 - (b) Record information held by the council in relation to any of the matters referred to in section 9(1)(a) to (j);
 - (c) Furnish information upon request or as required by law to provincial and national government;
 - (d) Gather information regarding potential and actual waste generators, service providers and licensees;
 - (e) Provide information to waste generators, service providers, licensees and the local community in order to –

- (i) Facilitate monitoring of the performance of the council, service providers and licensees, and, where applicable, waste generators;
- (ii) Stimulate research; and
- (iii) Assist the council to achieve the main objects of this By-law.

9. Provision of information

- (1) The council may, subject to the provisions of any other law including the common law, require any waste generator, licensee, service provider or person involved in or associated with the provision of council services or commercial services within the council to furnish information to the council that may reasonably be required for the information system. Such information may concern –
 - (a) Significant sources of waste generation and the identification of the generators of waste;
 - (b) Quantities and classes of waste generated;
 - (c) Management of waste by waste generators;
 - (d) Waste handling and waste disposal facilities;
 - (e) Population and development profiles;
 - (f) Reports on progress in achieving any waste management targets;
 - (g) The management of radioactive waste;
 - (h) Any information which has been compiled in accordance with subsection 33 (2)(e);
 - (i) Markets for waste by class of waste or category; and
 - (j) Any other information required by legislation, regulation or guidelines.
- (2) The council may, at its discretion, determine when and how often information must be furnished.

10. Manner of engaging in waste minimisation initiatives

Notwithstanding the need to promote waste minimisation, recycling and reuse of waste, no person may undertake waste minimisation initiatives in such a manner that is likely to cause or to increase the risk of harm to human health or damage to the environment.

CHAPTER 3

COUNCIL SERVICES

Part I: Providing Access to Council Services

11. Duty to provide access to council services

- (1) The council has an obligation to the local community to progressively ensure efficient, affordable, economical and sustainable access to council services.
- (2) This duty is subject to –
 - (a) The obligation of the local community to pay the prescribed fee, for the provision of council services, which must be priced in accordance with any nationally prescribed norms and standards for rates and tariffs; and
 - (b) The right of the council to differentiate between categories of users and geographical areas when setting service standards and levels of service for the provision of council services. In exercising the right in this subsection, the council must comply with national legislation and have regard to the factors set out in subsection (b).
- (3) The council must take the following factors into account in ensuring access to council services:
 - (a) The waste management hierarchy set out in section 2 (2);
 - (b) The need to use resources efficiently;
 - (c) The need for affordability;
 - (d) The requirements of operational efficiency;
 - (e) The requirements of equity; and
 - (f) The need to protect human health and the environment.

12. The provision of council services

- (1) The council must as far as reasonably possible and subject to the provisions of this By-law –
 - (a) Provide for the collection of domestic waste, business waste and dailies on a regular basis, which in the case of dailies requires collection on a daily basis; and
 - (b) Provide recycling facilities,

At a cost to end users determined in accordance with the prescribed fee promulgated by the Council.

- (2) In relation to council services, the council may determine-
 - (a) The quantities of waste that will be collected;
 - (b) Which residential or commercial premises require council services more frequently than the regular collection service for reasons of health, safety and environmental protection;
 - (c) The maximum amount of waste that may be placed for collection without the provision of an additional service or the imposition of an additional tariff; and
 - (d) Specify requirements for the provision of waste storage areas and access to such areas in respect of new premises which are constructed after the commencement of this By-law.
- (3) The council may provide, or require the generator of the waste to provide, an approved receptacle for the storage of domestic waste, business waste and dailies pending collection. Where such receptacle is provided by the council, it remains the property of the council.
- (4) In providing council services, the council or service provider may determine or designate-
 - (a) Collection schedules;
 - (b) Locations for placing approved receptacles for collection,
 - (c) Which types of waste generated by the occupier of any premises are recyclable waste and determine the conditions for their storage or collection; and
 - (d) Which waste items are unsuitable for collection.

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- (5) The council or service provider may require a generator of dailies and business waste to compact that portion of the waste that is compactable. Such a requirement may be imposed where the quantity of dailies or business waste generated on premises requires daily removal of more than the equivalent of eight 240-litre bins and where, in the opinion of the council or service provider, the major portion of such waste is compactable. The occupier of premises may elect to compact any volume of such waste and place it into an approved receptacle or wrapper approved by the council or service provider: Provided that-
 - (a) The capacity of the wrapper must not exceed 85 litres and the mass of the wrapper and contents must not exceed 35 kilograms;
 - (b) After the waste has been compacted and put into the wrapper, it must be placed in the approved receptacle and must be stored so as to prevent damage to the wrapper or any nuisance arising until collected; and
- (6) Any approved receptacle used in terms of subsection (5) may be collected, emptied and returned to the premises by the council or service provider at such intervals as it may deem necessary.
- (7) The council or service provider may review any decisions taken in terms of subsection (3) at any time.
- (8) The council or service provider must notify all generators of domestic waste, business waste and dailies of any decisions taken in terms of subsections (2) or (3) in writing.

Part II: Using Council Services

13. Obligations of generators of domestic waste, business waste and dailies –

- (1) Any person generating domestic waste, business waste and dailies (other than waste which has been designated by the council as recyclable) must place domestic waste, business waste and dailies in an approved receptacle.
- (2) No person may allow an animal in his control to interfere with, overturn or damage a receptacle, which has been placed for collection.
- (3) The occupier of premises must ensure that –
 - (a) No hot ash, unwrapped glass or other domestic waste, business waste and dailies which may cause damage to approved receptacles or which may cause injury to the council or service provider's employees while carrying out their duties in terms of this

By-law, is placed in approved receptacles before suitable steps have been taken to avoid such damage or injury;

- (b) No material, including any liquid, which by reason of its mass or other characteristics is likely to render such approved receptacles unreasonably difficult for employees of the council or service provider to handle or carry, is placed in such receptacles;
 - (c) Every approved receptacle on the premises is kept closed save when waste is being deposited in it or discharged from it, and every approved receptacle is kept in a clean and hygienic condition;
 - (d) The approved receptacle delivered by the council is not used for any purpose other than the storage of domestic waste, business waste and dailies and, in particular, that no fire may be lit in a bin or container;
 - (e) The approved receptacle is placed outside the entrance to the premises before a time and on a day of the week specified by the council or service provider by notice to the owner or occupier of the premises, except where, on written application to the council, the council has indicated in writing that it is satisfied that a person is physically infirm or otherwise incapable of complying with the notice; and
 - (f) The approved receptacle, placed in accordance with subsection (3) (d) must be undamaged and properly closed so as to prevent the dispersal of its contents.
- (4) The owner or occupier of premises must provide space and any other facilities deemed necessary by the council or service provider on the premises for the storage of approved receptacles.
- (5) The space provided in terms of subsection (4) must –
- (a) Be in such a position on the premises as will allow the storage of approved receptacles without their being visible from a street or public place;
 - (b) Where dailies are generated on the premises –
 - (i) Be in such a position as will allow the collection and removal of such waste by the council or service provider's employees without hindrance; and
 - (ii) Be not more than 20m from the entrance to the premises used for the collection of waste by the council or service provider;

- (c) Be so located as to permit convenient access to and egress from such space for the council or service provider's waste collection vehicles;
 - (d) Comply with any further reasonable requirements imposed by the council or service provider by notice to the owner or occupier of the premises; and
 - (e) Be constructed in accordance with the requirements of any applicable building regulations.
- (6) The occupier of premises must place or cause the approved receptacles to be placed in the space provided in terms of subsection (4) and must at all times keep them there, save that:
- (a) In the case of buildings erected, or buildings, the building plans of which have been approved, prior to the coming into operation of this By-law, or
 - (b) In the event of the council or service provider being unable to collect and remove waste from the space provided in terms of subsection (4);

the council or service provider may, having regard to the avoidance of nuisance and the convenience of collection of waste, indicate a position within or outside the premises where the approved receptacles must be placed for the collection and removal of such waste and such receptacles must then be placed in such position at such times and for such period as the council or service provider may require.

14. The prescribed fee for council services

The council may either levy rates on property or determine tariffs (or both) for the provision of council services.

15. Liability to pay for council services

- (1) The owner of premises is liable to the council to pay the prescribed fee for the provision of council services, and is not entitled to exemption from the liability to pay the prescribed fee by reason of his not making use, or of making a partial or limited use, of council services regardless of whether the council provides such services directly or through a service provider.
- (2) The prescribed fee becomes due and payable on the same date as the general assessment rate levied.

CHAPTER 4

COMMERCIAL SERVICES

Part I: Provision of Commercial Services by Licensees and Flow Control

16. Provision of commercial services by licensees

- (1) Save in the case of garden waste, only a licensee may provide commercial services.
- (2) Any person requiring commercial services must satisfy himself that the contractor is licensed to collect and dispose of the category of waste that has been generated and must take reasonable steps to ensure that the relevant waste is collected and disposed of in terms of this By-law.

17. Provision for council co-ordination of waste disposal

The council may direct, by a notice published in the media, that a category of waste be disposed of at a particular depot or disposal site. No person may dispose of such waste other than as specified in the notice gazetted under this section or as specified by the council under other empowering legislation prior to the coming into operation of this By-law.

Part II: Business, Industrial and Recyclable Waste

18. Storage of business, industrial and recyclable waste

- (1) The owner or occupier of premises on which business, industrial or recyclable waste is generated must ensure that until such time as such waste is collected by a licensee from the premises on which it was generated –
 - (a) The waste is stored within a bulk container or other approved receptacle; and
 - (b) No nuisance, including but not limited to dust, is caused by the waste in the course of generation, storage, or collection.

19. Collection and disposal of industrial, business and recyclable waste

- (1) The owner or occupier of premises generating business, industrial and recyclable waste must ensure that-
 - (a) The container in which the waste is stored may not be kept in a public place except as required for collection;
 - (b) The waste is collected by a licensee within a reasonable time after the generation thereof; and
 - (c) That the service rendered by the licensee must only be in respect of that portion of the business, industrial or recyclable waste authorised in its license.
- (2) A licensee must dispose of business, industrial or recyclable waste at a waste handling facility or waste disposal facility designated by the council as a waste disposal facility for that purpose in terms of section 17 above and in accordance with the provisions of section 28.

Part III: Garden Waste and Bulky Waste**20. Storage, collection and disposal of garden waste and bulky waste –**

- (1) The owner or occupier of the premises on which garden waste is generated may compost garden waste on the property, provided that such composting does not cause a nuisance.
- (2) The occupier of the premises on which garden waste is generated and not composted or on which bulky waste is generated must ensure that such waste is collected and disposed of within a reasonable time after the generation thereof.
- (3) Any person or licensee may remove garden waste and bulky waste, provided that once such waste has been collected from the premises on which it was generated, it is deposited at a garden waste handling facility in accordance with the provisions of section 28.
- (4) At the written request of the occupier of premises the council or service provider may, in its sole discretion, deliver an approved receptacle for the purpose of storing garden waste in addition to any approved receptacle delivered to the premises for the storage of domestic waste. The provisions contained in section 13, read with the necessary changes, must apply to an approved receptacle delivered in terms of this section but which is to be used for the storage of garden waste.
- (5) Where, in the course of providing council services, the council or the service provider providing the service is of the opinion that it would cause inconvenience to members of the public not to simultaneously remove garden and bulky waste, the council or service provider may remove such waste if such waste has been placed in an approved receptacle referred to in section 13 in the space designated for domestic waste, in which event the tariff for domestic waste, read with the necessary changes, must apply.

Part IV: Building Waste**21. Generation of building waste**

- (1) The owner or occupier of premises on which building waste is to be generated must notify the council, in writing, of the intention to generate building waste and of the proposed manner for its removal and disposal at least 14 days prior to the intended generation of such waste.
- (2) The owner or occupier of such premises must ensure that –

- (a) Until disposal, all building waste, together with the containers used for the storage, collection or disposal thereof, is kept on the premises on which the waste was generated;
- (b) The premises on which the building waste is generated does not become unsightly or cause a nuisance as a result of accumulated building waste;
- (c) Any building waste which is blown off the premises is promptly retrieved; and
- (d) Pursuant to any instructions from the council, any structure necessary to contain the building waste is constructed.

22. Storage of building waste

- (1) The owner or occupier of premises may apply to the council for written consent to place an approved receptacle for the storage and collection of building waste in the road reserve for the period of such consent.
- (2) Any consent given in terms of subsection (1) may be subject to such conditions as the council may consider necessary.
- (3) Every approved receptacle, authorised in terms of subsection (1) and used for the removal of building waste, must –
 - (a) Have clearly marked on it the name, address and telephone number of the person in control of such approved receptacle;
 - (b) Be fitted with reflecting chevrons or reflectors which must completely outline the front and the back thereof; and
 - (c) Be covered at all times other than when actually receiving or being emptied of such waste so that no displacement of its contents can occur.

23. Collection and disposal of building waste

- (1) The owner or occupier of premises on which building waste is generated must ensure that the waste is disposed of by a licensee.
- (2) All building waste must be disposed at a waste disposal facility designated for that purpose by the council in terms of a notice under section 17, unless the council has given written consent for the building waste to be used for the purpose of land reclamation or for recycling.

Part V: Special Industrial, Hazardous or Health Care Risk Waste**24. Generation of special industrial, hazardous or health care risk waste**

- (1) No person may conduct an activity which may cause special industrial, hazardous or health care risk waste to be generated, without notifying the council, prior to the generation of such waste, of the composition of such waste, the estimated quantity generated, the method of storage, the proposed duration of storage, the manner in which it will be collected and disposed, and the identity of the licensee removing such waste: Provided that where such waste is being generated as a result of activities which commenced prior to the commencement of this By-law, the generator must notify the council within 6 months of the commencement of this By-law.
- (2) If so required by the council, the notification referred to in subsection (1) may be substantiated by an analysis of the composition of such waste certified by an appropriately qualified industrial chemist.
- (3) The person referred to in subsection (1) must notify the council in writing of any changes occurring with respect to the generation, composition, quantity and method and location of disposal of the special industrial, hazardous, or health care risk waste.

25. Storage of special industrial, hazardous or health care risk waste

- (1) Any person carrying on an activity which may cause special industrial, hazardous or health care risk waste must ensure that the special industrial, hazardous or health care risk waste generated on the premises is kept and stored thereon until it is collected from the premises.
- (2) Special industrial, hazardous or health care risk waste stored on premises must be stored in such a manner that it does not become a nuisance or cause harm to human health or damage to the environment, and in accordance with the requirements of any applicable building regulations or additional by-laws.
- (3) Special industrial, hazardous or health care risk waste must be stored in an approved receptacle for a period not exceeding any maximum period stipulated by the council before collection.
- (4) The council may enact additional by-laws providing guidelines for the management of health care risk waste.

26. Collection and disposal of special industrial, hazardous or health care risk waste

- (1) Only licensees may transport special industrial, hazardous and health care risk waste and must do so in accordance with the requirements of the council, stipulated as licence conditions or in additional by-laws, in respect of the type of vehicle, the markings and manner of construction of such vehicle, procedures for safety and cleanliness, and documentation relating to the source, transportation and disposal of such waste, and the requirements of any other legislation.
- (2) A licensee licensed to collect and dispose of special industrial, hazardous or health care risk waste, must inform the council at those intervals the council may stipulate in the licence or elsewhere, about the removal of special industrial, hazardous or health care risk waste, the date of such removal, the quantity, the composition of the waste removed and the facility at which the waste has been disposed.
- (3) A licensee must dispose of special industrial, hazardous or health care risk waste at a waste disposal facility designated by the council as a waste disposal facility for that purpose and in accordance with the provisions of section 28.

CHAPTER 5**TRANSPORTATION AND DISPOSAL OF WASTE****27. Transportation of waste**

- (1) Notwithstanding the provisions of any other legislation, no person may-
 - (a) Operate a vehicle for the conveyance of waste upon a street unless the vehicle has a body of adequate size and construction for the type of waste being transported;
 - (b) Fail to maintain the vehicles used for the conveyance of waste in a clean, sanitary and roadworthy condition at all times;
 - (c) Cause or permit any waste being transported in or through the council to become detached, leak or fall from the vehicle transporting it, except at a waste disposal facility;
 - (d) Knowingly dispose waste at a waste disposal facility that is not permitted to accept such waste.

28. Disposal of waste

- (1) Waste generated within the council must be disposed of at a waste disposal facility that has been permitted to accept and dispose of such waste in terms of section 17 and in accordance with the provisions of any other law regulating the disposal of waste.
- (2) No person may burn waste either in a public or private place except at an authorised incinerator operated by a licensee, or other than at a place designated by the council for such purpose.
- (3) Notwithstanding the provisions of subsection (1), any person may dispose of those forms of recyclable waste specified by the council in a notice in terms of section 17 or elsewhere at designated garden waste handling facilities, but may do so only if all such waste is brought to the facility in vehicles able to carry a maximum load of two tonne or less.
- (4) The disposal of waste at any waste disposal facility may, in addition to any conditions imposed by a competent authority, be subject to such conditions as the council may from time to time specify, including the hours of opening and closing, the nature of the waste which may be disposed of, the position in any such waste disposal facility in which the waste may be placed and any other matters which the council considers necessary to ensure the environmentally sound management of waste.
- (5) Every person who enters a waste disposal facility must –
 - (a) Enter the waste disposal facility at an access point determined by the operator of the waste disposal facility;
 - (b) On request, provide the council or the operator of the waste disposal facility with any information regarding the composition of the waste; and
 - (c) Follow all instructions issued by the operator of the waste disposal facility in regard to access to the actual place where, and the manner in which, the waste should be deposited.
- (6) No person may-
 - (a) Bring any liquor or intoxicating or narcotic substance onto a waste disposal facility or enter such facility in an intoxicated state;
 - (b) Smoke cigarettes or any other substance at a waste disposal facility;
 - (c) Enter a waste disposal facility for any purpose other than the disposal of waste in terms of this By-law, unless authorised to do so by the

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operator of the waste disposal facility or the council and then only at such times and on such conditions as the council or operator may from time to time determine;

(d) Dispose of waste at a waste disposal facility which is not permitted for such waste; or

(e) Light any fire upon or near any disposal area without authorisation.

- (7) Any person who contravenes subsection (6) (c) will be liable for all reasonable costs incurred by the council in removing or otherwise dealing with waste improperly disposed of at a waste disposal facility.
- (8) The operator of the waste disposal facility may at any time require a vehicle or a container on a vehicle that has entered the waste disposal facility for the purposes of disposing waste to be weighed at a weighbridge.
- (9) The council, the operator of the waste disposal facility, an authorised official or any other persons duly authorised by the council may, at a waste disposal facility, inspect the content and nature of waste to be disposed of or processed and may take samples and test any waste found on any vehicle to ascertain its composition.
- (10) Any person contravening any of the provisions of this section may be refused entry or be removed from a disposal waste disposal facility. Such person may also be charged criminally and civilly.

CHAPTER 6

SERVICE PROVIDERS

29. Agreement, delegation and customer charter

- (1) The council may discharge any of its obligations under section 11 of this By-law by entering into a service delivery agreement with a service provider or service providers in terms of the Systems Act.
- (2) Subject to the provisions of the Systems Act or any other legislation, the council may assign to a service provider any power enjoyed by the council under this By-law: Provided that the assignment is required for the service provider to discharge an obligation under its service delivery agreement.
- (3) Any reference in this By-law to "council or service provider" should be read as the "council" if the council has not entered into a service delivery agreement, and should be read as "service provider" if the council has entered into a service delivery agreement.
- (4) Service providers must provide services in accordance with a customer charter which must be drawn up in consultation with the council and which must-
 - (a) Accord with the provisions of this By-law;
 - (b) Be accessible to the public;
 - (c) Establish the conditions of the service including collection times; and
 - (d) Provide for the circumstances in which council services may be limited.

CHAPTER 7

LICENSEES

Part I: Registration

30. Registration requirements

- (1) Any person who provides or intends to provide commercial services within the council must register with the council.
- (2) Registration must be by written notification to the council, and must specify-
 - (a) The name and the residential and postal address of the person providing commercial services, and if a company or close corporation, its registration number, names of its directors or members and the address of its registered head office;
 - (b) The nature of the waste management service provided or intended to be provided by the person;
 - (c) The scope of the service, which must specify the number of clients served or intended to be served at the time of registration, the geographical area of operation and the actual or intended capital expenditure involved, or to be involved, in rendering the service; and
 - (d) The disposal facilities it owns or intends to utilise for the disposal of waste it collects or generates.
- (3) The council must provide proof of registration specifying the name and the residential and postal address of the registered person and describing the nature of the commercial services provided or intended to be provided by that person.
- (4) Where a person has registered in terms of subsection (1) and the person –
 - (a) Acquires a firm providing commercial services;
 - (b) Merges with other persons providing commercial services;
 - (c) Changes ownership;
 - (d) Changes juristic nature;
 - (e) Changes the nature of the commercial services it provides;

- (f) Intends to cease providing such services;
- (g) Is involved in winding-up proceedings; or
- (h) Increase its gross revenue or client base in excess of 25%,

Then that person must notify the council of that occurrence and, save in the circumstances set out in subsection (4) (e) or (f), re-register in accordance with the provisions of subsection (2).

Part II: Licence to Provide Commercial Services

31. Licence requirements

- (1) Subject to section 35, no person may provide commercial services without having first obtained a licence.
- (2) Licences issued under this By-law –
 - (a) Are personal to the licensee and incapable of cession or assignment without the prior written consent of the council;
 - (b) Are valid for the period stipulated in the licence, which period may not exceed five years, and may, upon application in terms of this By-law, be renewed by the council for further periods; and
 - (c) May be suspended or revoked by the council, on grounds for suspension or revocation which must be stipulated in the licence.

32. Licence application

- (1) Applications for a licence to provide commercial services must be in writing on a form prescribed by the council. The form must specify the information to be included in the application and the time available for making the application, which period must not be less than two months in duration.
- (2) The council, or its duly delegated representative, must consider each application, having regard to the following:

- (a) The financial, technical and managerial competency and experience of the applicant;
 - (b) The environmental, health and safety record of the applicant;
 - (c) The nature of the waste management service to be provided; and
 - (d) Any other factors which the council considers relevant.
- (3) After considering the application in terms of subsection (2), the council must –
- (a) Approve the application by issuing a licence subject to terms and conditions; or
 - (b) Reject the application, which rejection must be accompanied by reasons.

33. Licence terms and conditions

- (1) When issuing a licence in terms of section 32, the council may, subject to the provisions of subsection (2), impose any licence conditions it deems reasonably necessary.
- (2) Licences issued by the council must –
- (a) Describe the geographical area of operation of the licensee;
 - (b) Specify the licence period and the procedure for any licence renewal;
 - (c) Specify the category or categories of waste the licensee may manage;
 - (d) Contain a requirement that the licensee must comply with this By-law, and applicable provincial and national legislation;
 - (e) Require the licensee to keep monthly records in respect of-
 - (i) The quantities of waste received, the location of the sources generating the waste, the identity of the generator and, where the licensee manages different categories of waste, the quantity of each category managed;
 - (ii) Emission levels where the licensee manages a licensed incinerator;
 - (iii) Any activity related to the achievement of local, provincial or national targets where such targets have been determined, and must include the results of monitoring such activity;

- (iv) Any waste minimisation or recycling activities in which the licensee is involved;
 - (v) Consumer supply figures; and
 - (vi) Complaints received by the public;
- (f) Require the licensee to have the appropriate property and liability insurance for any waste disposal or handling facilities owned by it in accordance with an insurance programme approved by the council under the licence, which approval may not subject the council to any liability if the insurance programme proves inadequate;
- (g) Permit the licensee to conduct any other business activity not regulated in the licence, provided that any such business activity does not conflict with or adversely affect the licensee's obligations under the licence, this By-law or any other law, and provided that such activities are separately accounted for;
- (h) Stipulate procedures for amendment of the licence;
- (i) Stipulate circumstances under which the licence may be revoked or suspended by the council and set out an appeals procedure;
- (j) Prescribe the payment of a licence fee;
- (k) Require the licensee to take reasonable steps to prevent his employees from committing any act or omission in the course of their employment that may cause harm to humans or damage to the environment;
- (l) Require the licensee to ensure compliance with this By-law and conditions by its employees, agents and sub-contractors, and ensure that sub-contractors are licensed to store, collect, transport and dispose of any waste stream that they have been contracted to manage; and
- (m) Contain any other term or condition that the council considers relevant.

34. Prohibited conduct

- (1) Licensees may not:
- (a) Cease operations at a waste disposal facility without a closure plan approved by DWAF and the Department of Environmental Affairs and Tourism or any other competent authority;
 - (b) Abandon a waste disposal facility or waste handling facility;

- (c) Operate in contravention of the terms and conditions of their licence;
- (d) Fail or refuse to give information, or give false or misleading information when required to do so in terms of this By-law;
- (e) Fail to take all reasonable steps to prevent an act or an omission by an employee where the employee is or was acting on behalf of the licensee, when such an act or omission would constitute an offence if it were the act or omission of a licensee;
- (f) Dispose of any health care risk waste otherwise than by incineration, unless prior consent has been obtained from the DWAF; or
- (g) Dispose of hazardous or special industrial waste otherwise than by disposing of it at a waste disposal facility which has been permitted for the disposal of this category of waste.

35. Transitional provisions and exemptions

- (1) Any person lawfully providing commercial services within the council at the time an application for a licence is made, may continue to provide commercial services while the licence application is being considered by the council.
- (2) A council may at its sole discretion, and having regard to the main object of this By-law and its integrated waste management plan, exempt any form of commercial service from the provisions of Chapter 7 of this By-law and must indicate the terms and scope of any exemption in a notice published in the media.

CHAPTER 8

LITTERING, DUMPING AND ABANDONED ARTICLES

36. Duty to provide facilities for litter

- (1) The council, or owner in the case of privately owned land, must take reasonable steps to ensure that sufficient approved receptacles are provided for the discarding of litter by the public, in any place to which the public has access.
- (2) The council, or owner of privately owned land, must ensure that all approved receptacles installed on the premises for the collection of litter are –

- (a) Maintained in good condition;
 - (b) Suitably weighted and anchored so that they cannot be inadvertently overturned;
 - (c) Constructed in such a manner as to ensure that they are weatherproof and animal proof;
 - (d) Of suitable size to contain all litter likely to be generated on the premises and by the users thereof;
 - (e) Placed in locations convenient for the use by users or occupants of the premises to discourage littering or the unhealthy accumulation of waste; and
 - (f) Emptied and cleansed periodically or when full. The emptying and cleansing of approved receptacles must be sufficiently frequent as to ensure that no receptacle or its contents may become a nuisance or provide reasonable grounds for complaint.
- (3) In any public place where an approved receptacle has been placed for the depositing of litter, the council may put up notices about littering.

37. Prohibition of littering

- (1) No person may –
- (a) Cause litter;
 - (b) Sweep any waste into a gutter, onto a road reserve or onto any other public place;
 - (c) Disturb anything in, or remove anything from any receptacle which has been placed for the purposes of collecting litter in such a manner as to cause the contents of the receptacle to spill or fall onto the ground around it; and
 - (d) Allow any person under his control to do any of the acts contemplated in paragraphs (a), (a) or (b) above.
- (2) Notwithstanding the provisions of subsection (1), the council, or owner in the case of privately owned land to which the public has access, must within a reasonable time after any litter has been discarded, dumped or left behind, remove such litter or cause it to be removed. For the purposes of this section, a reasonable time may mean that period of time before the litter becomes a nuisance or cause for complaint.

38. Prohibition of dumping and abandoning articles

- (1) No person may, without authorisation, deposit or permit the depositing of any waste whether for gain or reward or otherwise, upon any land or in any building of which he is the owner or occupier except where such deposits are made in accordance with the provisions of this By-law.
- (2) Subject to any provisions to the contrary contained in this By-law, no person may leave any article or allow any article under his or her control to be left at a place with the intention of abandoning it.
- (3) No person may dump waste.
- (4) Any article, other than a motor vehicle deemed to have been abandoned in terms of section 114 of the Road Traffic Act, 1989 (Act 29 of 1989), which, in the light of such factors as the place where it is found, the period it has been lying at such place and the nature and condition of such article, is reasonably regarded by the council as having been abandoned, may be removed and disposed of by the council as it may deem fit.
- (5) The council may remove and dispose of any article which is chained or fastened to any pole, parking meter or any other property belonging to the council, without authorisation as it may deem fit.

CHAPTER 9**ADMINISTRATIVE ENFORCEMENT PROVISIONS*****Part 1: Appointment of Authorised Officials*****39. Appointment of authorised officials**

- (1) The council shall appoint authorised officials who shall be vested with the power to –
 - (a) Discharge the council's right of access to premises in terms of section 101 of the Systems Act;
 - (b) Issue an enforcement notice under section 44;
 - (c) Impose an infringement notice in terms of section 45; and
 - (d) Exercise the powers of an authorised official.

- (2) An authorised official is not a peace officer within the meaning of the Criminal Procedure Act and has no powers of arrest in respect of any offence created in this By-law.
- (3) In appointing an authorised official, the council shall have regard to:
 - (a) A person's technical understanding and experience of matters related to waste management; and
 - (b) Any other factor that may be relevant to supervision and enforcement of this By-law, whether technical or administrative.
- (4) An authorised official may be an employee of the council or any service provider of the council: Provided that, in the latter case, there is no conflict of interest between the person's duty as an authorised official and as an employee of the service provider.
- (5) Upon appointment, authorised officials shall be issued with a means of identification by the council (hereinafter called "an identification") which shall state the name and function of the authorised official, and must include a photograph of the officer. An authorised official, acting within the powers vested in him by this By-law, is required to present identification on demand by a member of the local community.

Part II: Powers of Authorised Officials

40. Powers to execute work and inspect vehicles and premises

- (1) In addition to the powers an authorised official has as an authorised representative of the council under section 101 of the Systems Act or any other legislation, an authorised official, may:
 - (a) Enter any land or premises to execute work or conduct an inspection; and
 - (b) May search any vehicle or other mode of conveyance with the consent of the owner or person in charge of the vehicle.
- (2) Where consent is not obtained in terms of subsection (1)(b), a vehicle or other mode of conveyance may be searched or stopped and searched, only pursuant to a warrant issued in accordance with the procedure set out in the Criminal Procedure Act.
- (3) A search conducted in terms of this By-law must be conducted in a manner that conforms to the requirements of the Bill of Rights and any other law and, in particular, must be conducted with strict regard to

decency and order, respect for a person's dignity, freedom and security, and personal privacy.

- (4) To the extent that access to premises does not fall within the scope of section 101 of the Systems Act or any other legislation, an authorised official who has reasonable grounds to suspect that there is an environmental emergency and that any delay in obtaining a search warrant will cause serious harm to human health or damage to the environment may, without warrant, enter and search any premises associated with the emergency: Provided that the entry and search be conducted in conformity with the requirements of the Bill of Rights and any other law, and in particular, with strict regard to decency and order, respect for a person's dignity, freedom and security, and personal privacy.
- (5) Where, in the opinion of an authorised official, any search of a vehicle, as contemplated in this By-law, gives rise to the reasonable apprehension that the presence of waste in or on that vehicle is a serious and immediate danger to human health or to the environment, the authorised official may seize that vehicle in order to prevent, or where that is impossible, to mitigate harm to human health or damage to the environment.
- (6) In the event of the seizure of any vehicle under subsection (5), the council must-
 - (a) Forthwith take steps to dispose of such waste in order to prevent, and where that is impossible, to mitigate harm to human health or damage to the environment; and
 - (b) Return the said vehicle, within 48 hours after disposing of such waste, to the control of the licensee or person from whose possession or control it was taken.

41. Powers to question

- (1) In order to monitor or enforce compliance with this By-law, the authorised official, may, subject to the requirements of the Bill of Rights, and any other law including the common law, require a licensee or any other person to disclose information, either orally or in writing, and either alone or in the presence of witnesses, on any matter to which this By-law relate, require that the disclosure be made on oath or affirmation, and exercise any other power of a authorised official.
- (2) An authorised official may be accompanied by an interpreter and any other person reasonably required to assist the authorised official in conducting the inspection.

- (3) An authorised official must, on request, provide his identification as an authorised official.

42. Supervision of licensees

- (1) Authorised officials must inspect the workplace of a licensee not less than twice a year, and an authorised official is entitled to enter the workplace of a licensee for this purpose.
- (2) Such an inspection must be conducted in conformity with the requirements of the Bill of Rights, and any other law, and in particular, an authorised official in conducting an inspection under subsection (1) must do so with strict regard to decency and order, respect for a person's dignity, freedom and security, and personal privacy.
- (3) If an authorised official is of the opinion, after such an inspection, that a licensee is complying with this By-law, he may, subject to the provisions of subsection (4), issue the licensee with a certificate confirming compliance, which must state –
 - (a) The name and residential and postal address of the licensee;
 - (b) The time, date and scope of the inspection; and
 - (c) Any remarks which in the opinion of the authorised official may be relevant.
- (4) If a licensee fails to obtain a certificate confirming compliance at three inspections over a period of two years, the authorised official may recommend that the council review the licence, and should there be reasonable grounds, the council may revoke the licence in section 31 (2) (c): Provided that the consecutive inspections occur at not less than four month intervals.
- (5) Authorised officials must keep a register recording each inspection that has been undertaken.

43. Supervision of owners and occupiers

Owners and occupiers must keep their premises clean and free from any waste which in the opinion of an authorised official is likely to cause a nuisance, harm to human health or damage to the environment, and must take reasonable steps to prevent an employee acting in the course of their employment, from committing an act or omission that may cause a nuisance, harm to human health or damage to the environment.

decency and order, respect for a person's dignity, freedom and security, and personal privacy.

- (4) To the extent that access to premises does not fall within the scope of section 101 of the Systems Act or any other legislation, an authorised official who has reasonable grounds to suspect that there is an environmental emergency and that any delay in obtaining a search warrant will cause serious harm to human health or damage to the environment may, without warrant, enter and search any premises associated with the emergency: Provided that the entry and search be conducted in conformity with the requirements of the Bill of Rights and any other law, and in particular, with strict regard to decency and order, respect for a person's dignity, freedom and security, and personal privacy.
- (5) Where, in the opinion of an authorised official, any search of a vehicle, as contemplated in this By-law, gives rise to the reasonable apprehension that the presence of waste in or on that vehicle is a serious and immediate danger to human health or to the environment, the authorised official may seize that vehicle in order to prevent, or where that is impossible, to mitigate harm to human health or damage to the environment.
- (6) In the event of the seizure of any vehicle under subsection (5), the council must-
 - (a) Forthwith take steps to dispose of such waste in order to prevent, and where that is impossible, to mitigate harm to human health or damage to the environment; and
 - (b) Return the said vehicle, within 48 hours after disposing of such waste, to the control of the licensee or person from whose possession or control it was taken.

41. Powers to question

- (1) In order to monitor or enforce compliance with this By-law, the authorised official, may, subject to the requirements of the Bill of Rights, and any other law including the common law, require a licensee or any other person to disclose information, either orally or in writing, and either alone or in the presence of witnesses, on any matter to which this By-law relate, require that the disclosure be made on oath or affirmation, and exercise any other power of a authorised official.
- (2) An authorised official may be accompanied by an interpreter and any other person reasonably required to assist the authorised official in conducting the inspection.

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- (3) An authorised official must, on request, provide his identification as an authorised official.

42. Supervision of licensees

- (1) Authorised officials must inspect the workplace of a licensee not less than twice a year, and an authorised official is entitled to enter the workplace of a licensee for this purpose.
- (2) Such an inspection must be conducted in conformity with the requirements of the Bill of Rights, and any other law, and in particular, an authorised official in conducting an inspection under subsection (1) must do so with strict regard to decency and order, respect for a person's dignity, freedom and security, and personal privacy.
- (3) If an authorised official is of the opinion, after such an inspection, that a licensee is complying with this By-law, he may, subject to the provisions of subsection (4), issue the licensee with a certificate confirming compliance, which must state –
 - (a) The name and residential and postal address of the licensee;
 - (b) The time, date and scope of the inspection; and
 - (c) Any remarks which in the opinion of the authorised official may be relevant.
- (4) If a licensee fails to obtain a certificate confirming compliance at three inspections over a period of two years, the authorised official may recommend that the council review the licence, and should there be reasonable grounds, the council may revoke the licence in section 31 (2) (c): Provided that the consecutive inspections occur at not less than four month intervals.
- (5) Authorised officials must keep a register recording each inspection that has been undertaken.

43. Supervision of owners and occupiers

Owners and occupiers must keep their premises clean and free from any waste which in the opinion of an authorised official is likely to cause a nuisance, harm to human health or damage to the environment, and must take reasonable steps to prevent an employee acting in the course of their employment, from committing an act or omission that may cause a nuisance, harm to human health or damage to the environment.

Part III: Enforcement and Infringement Notices**44. Enforcement notices**

(1) If, in the opinion of the authorised official, a person is –

- (a) Causing a nuisance, harm to human health or damage to the environment; or
- (b) As licensee, is failing to comply with the terms of a licence granted in terms of this By-law; or
- (c) As owner or occupier, has failed to satisfy an obligation in terms of section 43 of this By-law,

the authorised official may issue or cause to be issued on that person an enforcement notice in terms of this section.

(2) An enforcement notice issued under this section must state–

- (a) The name and also the residential and postal address, if either or both of these be known, of the affected person;
- (b) The nature of the nuisance, harm to human health or damage to the environment that the affected person is causing or is likely to cause;
- (c) The steps required to forestall or remediate the nuisance, harm to human health or damage to the environment in sufficient detail to enable compliance with the enforcement notice;
- (d) That the affected person must not later than 21 calendar days from the date on which the enforcement notice is issued take steps to comply with the notice;
- (e) That failure to comply with the requirements of the enforcement notice within the period contemplated in paragraph (c) may result in civil or criminal liability or the fixing of a penalty of the municipal service account of the affected person; and
- (f) That written representations may be made to the council in accordance with section 47, or a designated committee or internal functionary to which powers under this By-law have been delegated, at a specified place, within 21 calendar days of receipt of the notice.

(3) If an affected person fails to comply with an enforcement notice, the council or anyone authorised by the council, may perform the steps required in the enforcement notice, provided that council does so in conformity with the requirements of the Bill of Rights and any other law, in

particular, an authorised official must act with strict regard to decency and order, respect for a person's dignity, freedom and security, and personal privacy.

- (4) Where the council incurs any expenditure as a result of performing such steps, the council may recover any reasonable expenditure from the person who failed to act as directed or, where criminal proceedings have not been instituted, by means of civil proceedings.
- (5) Any licensee which commits an offence in terms of section 51 (1)(b) and has, within the last five years, been convicted of the same offence, may be declared a serial offender under this By-law and have its license revoked immediately.

45. Infringement notices

- (1) If, in the opinion of the authorised official, a person is-

- (a) Contravening sections 13 (2), 13 (3) (a), 13 (3) (b), 13 (3) (c), 13 (3) (d), 13 (3) (f); 21 (2), 22 (3), 28 (2), 28 (6) (a), 28 (6) (b), or 28 (6) (d) of this By-law; or

- (b) Allowing waste other than domestic waste or dailies to remain uncollected,

the authorised official may serve or cause to be served on that person an infringement notice in terms of this section instead of a notice contemplated in section 56 of the Criminal Procedure Act (Act 51 of 1977).

- (2) The infringement notice must –

- (a) Specify, at the time when the notice is issued, the name and also the residential and postal address, if either or both of these be known, of the person on whom the infringement notice is served;

- (b) State the particulars of the infringement;

- (c) Specify the amount of the penalty payable in respect of that infringement and the place where the penalty may be paid which penalty may not exceed R5000,00 (five thousand Rand); and

- (d) Inform the person on whom the infringement notice is served that, not later than 28 calendar days after the date of service of the Infringement notice, he may –

- (h) Pay the penalty; or

- (i) Inform the council in writing that he elects to be tried in court on a charge of having committed an offence under section 51.
- (3) Where a person makes an election under section 41 (2), the procedure set out in section 50 applies.

46. Complaints

Any person may lodge a complaint with an authorised official, or through any other channel established by the council, that any other person is causing harm to human health or damage to the environment by engaging in council services or commercial services, in which event the authorised official, unless he has reasonable grounds to believe that the complaint is frivolous or an abuse of the main objects of this By-law set out in section 3, must investigate the complaint and must, if he is satisfied that such harm is or is likely to be caused, issue an enforcement notice or infringement notice, whichever be appropriate.

47. Representations

- (1) Any affected person may make representations to the council, or a designated committee or internal functionary of the council to which the council has delegated its powers, in the manner specified in the enforcement notice.
- (2) Representations must be made by submitting a sworn statement or affirmation to the council, designated committee or internal functionary within 21 calendar days of the service of the notice.
- (3) Any representation not lodged within 21 calendar days must not be considered, save where the affected person has shown good cause and the council, the designated committee or internal functionary condones the late lodging of the representation.
- (4) The council, or designated committee or internal functionary, must duly consider the representations and any response thereto by an authorised official or any other person, if there be such a response; and may, on its own volition, conduct any further investigations to verify the facts if that, in its opinion, is necessary. If the council, or designated committee or internal functionary, should conduct any further investigations, the results of such investigation must be made available to the affected person, who must be given an opportunity of making a further response if he so wishes, and the council, or designated committee or internal functionary, must also consider such further response.
- (5) After the council, or designated committee or internal functionary, is satisfied that the requirements of subsection (3) have been satisfied, the council, or designated committee or internal functionary, must make an

order in writing and give a copy of it to the affected person setting out its findings. Such an order may –

- (a) Confirm, alter or set aside in whole or in part, an enforcement notice; and
 - (b) Must specify the period within which the affected person must comply with any order made by it.
 - (c) If the enforcement notice is confirmed, in whole or in part, or is altered but not set aside, the council, or designated committee or internal functionary, must inform the affected person that he may elect to be tried in court, or must discharge the obligations set out in the enforcement notice.
- (6) If the affected person elects to be tried in court, he must notify the council, or designated committee or internal functionary of his election within seven calendar days, and on receipt of such notification by the council, or designated committee or internal functionary, the provisions of section 50 apply.
- (7) If the affected person does not elect to be tried in court, he must discharge his obligations under the enforcement notice within the prescribed manner and time.
- (8) If the affected person lodges a representation or elects to be tried in Court, any requirement in terms of section 44 of this By-law requiring compliance with an enforcement notice, may be suspended unless, in the opinion of the council, the affected person has caused an environmental emergency in which event and without derogation from any right that the affected person may have, or may in the future have, at common law or under any other law, to any relief of whatever nature, the affected person must immediately comply with any such requirement on being ordered, orally or in writing, by the council to do so.
- (9) If there is an environmental emergency and if the affected person, despite receiving a lawful order made in terms of subsection (8), fails to comply with such an order, the council may itself cause the environmental emergency to be stopped, reversed or abated, in which event the council may institute civil proceedings for the recovery of any reasonable and necessary expenditure which it has incurred or may incur in effecting such a stoppage, reversal or abatement.

CHAPTER 10

JUDICIAL ENFORCEMENT PROVISIONS

48. Service of documents and process

For the purposes of the service of any notice, order or other document relating to non-payment for the provision of council services, the address of the owner of the premises on which domestic waste and dailies is generated is deemed to be the place for service of documents and process of such owner.

49. Service of notices

- (1) Where any notice or other document is required by this By-law to be served on any person other than for the purpose of criminal proceedings-
 - (a) It must be served on him personally, failing which if it be served on any member of his household, 16 years or older, who signs for the receipt of such notice at his place of residence or business; and
 - (b) If sent by registered post to the person's address as contemplated in section 48, it constitutes service in terms of section 7 of The Interpretation Act, 1957 (Act 33 of 1957).

50. Trial

If a person who elects to be tried in court in terms of section 45 (2) (c), (h)) or section 47 (6), notifies the council of his election, the authorised official must within 10 calendar days take all necessary steps, as envisaged in the Criminal Procedure Act, 1977 (Act 51 of 1977), in order to secure the attendance and prosecution of the accused, in which event the enforcement notice or infringement notice must be cancelled.

51. Offences and penalties

Any person, including an affected person or licensee, who –

- (a) Contravenes or fails to comply with any provisions of this By-law;
- (b) Fails to comply with any notice issued in terms of this By-law; or

- (c) Fails to comply with any lawful instruction given in terms of this By-law, or
- (d) Who obstructs or hinders any authorised representative or employee of the Council in the execution of his or her duties under this By-law,

is guilty of an offence and liable on conviction to a fine or in default of payment to imprisonment for a period not exceeding 6 months.

CHAPTER 11

GENERAL PROVISIONS

52. Ownership

- (1) The person holding the permit to operate a waste disposal facility is deemed to be the owner of the waste disposed at that facility.
- (2) Such operator has a right of recourse against –
 - (a) Any person that causes waste to be disposed of at the waste disposal facility where that person knowingly and without the knowledge of the operator disposes waste that that facility is not permitted to accept; and
 - (b) Any waste generator that knowingly puts waste out for collection that is not of the category being collected.

53. Consolidation of by-laws.

- (1) Any by-laws relating to the main objects of this By-law must be maintained by the council in consolidated form together with this By-law, and must be made available to the public, on request.
- (2) Additional by-laws may be enacted relating to –
 - (a) The steps and measures to be adopted in giving effect to the duty of care set out in section 4;
 - (b) The locations at which any activities relating to waste, including disposal, may be carried out;
 - (c) The separation of waste at any stage in any activity relating to waste;
 - (d) Measures to promote waste minimisation;

- (e) The implementation and operation of recycling, re-use, refundable deposit or take-back schemes;
- (f) Penalties to be prescribed for the violation of licence conditions, and
- (g) Information to be furnished to the council.

54. Conflicting by-laws

- (1) In the event of a conflict between this By-law and any other By-law, this By-law prevails and such other By-law becomes inoperative and unenforceable for as long as the conflict remains.
- (2) Where possible, when considering an apparent conflict between this By-law and any other By-law, a reasonable interpretation that avoids a conflict must be preferred over any alternative interpretation that results in a conflict.

55. Date of commencement.

This By-law commences on the date of publication in the Eastern Cape Provincial Gazette.

NOTICE 175 OF 2005

LOCAL GOVERNMENT NOTICE
MUNICIPALITY OF BUFFALO CITY
BY-LAW ON THE DISPOSAL OF HUMAN REMAINS:

I, Mxolisi Tsika, the Buffalo City Municipal Manager hereby publish, in terms of section 13 of the Local Government Municipal Systems Act 2000 [Act No. 32 of 2000] read with section 162 of the Constitution of the Republic of South Africa Act 1996 [Act No. 108 of 1996] the By-Law Relating to the Disposal of Human Remains.

PURPOSE OF THE BY-LAW:

The purpose of this by-law is to regulate the disposal of human remains by burial or cremation, cemeteries, funerals, exhumation, the care of graves, memorial work, pauper burials and all other matters pertaining thereto.

CHAPTER 1

DEFINITIONS

1. In this by-law, unless the context otherwise indicates:

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

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

"anatomy subject" means a body delivered to an authorised school of anatomy in terms of the Anatomy Act, 1959 (Act No. 20 of 1959);

"ashes", means the cremated remains of a body;

"berm" means a concrete base on which a memorial is erected;

"berm section" means a section in a cemetery set aside by the Council where memorial work is erected on a berm;

"Births and Deaths Registration Act" means the Births and Deaths Registration Act, 1992 (Act 51 of 1992);

"body" means any dead human body including the body of a still-born child;

"burial order" means an order issued in terms of the Births and Deaths Registration Act;

"burial" means burial or inhumation into earth or any other form of burial and includes interment in a mausoleum and any other mode of disposal of a body;

"cemetery" means any land or part thereof within the local authority set aside by the Council or approved by Council as a cemetery;

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

"columbarium" means the place set aside in the basement of the crematorium or chapel for the placement in niches of receptacles containing ashes;

"Council" means:

- (a) the municipal council of Buffalo City Municipality, or the Council's successor-in-title, or any committee or person to which or whom an institution has been given or any power has been delegated or sub-delegated in terms of, or as contemplated in Section 59 of the Local Government Municipal Systems Act 2000 (Act No. 32 of 2000); or
- (b) a service provider in respect of any power, function or duty of the Council as contemplated in paragraph (a), assigned by it for the purposes of this by-law to that service provider in terms of section 81(2) of the Local Government Municipal Systems Act 2000 (Act No. 32 of 2000).

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

"crematorium" means a crematorium as defined in section 1 of the Ordinance or superseding legislation, which includes the buildings in which the ceremony is conducted and the cremation carried out;

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

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

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

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

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

"grave of conflict" means the grave of a person who died as a result of political or military conflict in or involving South Africa;

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

"Heroes' Acre" means an area of land set aside for the burial of heroes;

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

"indigent relief" means assistance received for burial or cremation of an indigent person;

"landscape section" means a section in a cemetery set aside by the Council where memorial work is restricted to a plaque or memorial slab;

"lawn section" means a section in a cemetery set aside by the Council where memorial work is restricted to a headstone only;

"Medical Officer of Health" means the officer appointed by Council or any other person acting in the capacity of the Medical Officer of Health;

"memorial section" means a section of a cemetery set aside for erection of memorials;

"memorial wall" means a wall in a cemetery or crematorium section provided for the placement of inscribed tablets commemorating deceased persons;

"memorial work" means any headstone, monument, plaque or other similar work erected or intended to be erected in any cemetery or crematorium commemorating a deceased person and includes a kerb demarcating a grave and a slab covering a grave;

"municipal area" means the area under the control and jurisdiction of the Council;

"niche" means a compartment in a columbarium or garden of remembrance for the placing of ashes;

"normal operational hours" means Monday to Friday 08h00 to 15h00 excluding Saturdays, Sundays and Public Holidays;

"NGO" means a non-governmental organization;

"office hours" means Monday to Friday 08h00 to 16h30 excluding Saturdays, Sundays and Public Holidays;

"officer-in-charge" means the Chief Cemeteries Officer, as appointed by Council, and his or her assignee;

"person" means a natural or juristic person;

"prescribed" means prescribed by the Council from time to time;

"prescribed fee" means a fee determined by the Council by resolution in terms of section 10G(7)(a)(ii) of the Local Government Transition Act, 1993 (Act No. 209 of 1993), or any other superseding or applicable legislation;

"stone mason" means a person carrying on business as a stone mason;

"tomb" means an above ground burial vault;

"Victim of Conflict" means a person defined in section 1 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999).

CHAPTER 2

DISPOSAL OF A BODY

2. REQUIREMENTS FOR DISPOSAL OF A BODY

A person can only bury or cremate a body in a cemetery after obtaining the permission of the Officer-in-charge and after arranging the date and time of the burial with the Officer-in-charge.

3. APPLICATION FOR BURIAL

- (1) A person intending to bury a body must submit a duly completed application form to the Officer-in-charge for approval.
- (2) The next-of-kin of the deceased or such other person who is authorized by the next of kin of the deceased must sign such application.

- (3) Despite the provisions of paragraph (2) the Officer-in-charge may, if she is satisfied that the signature of the next of kin cannot be obtained timeously, approve an application by an interested party.
- (4) The applicant must:
 - (a) Submit the application at least three working days before the burial;
 - (b) Indicate whether the application is in respect of a first or second burial, in respect of a particular grave;
 - (c) Indicate the date and time for such burial.
- (5) The Officer-in-charge must approve an application if:
 - (a) It is accompanied by an original burial order in terms of the Births and Deaths Registration Act;
 - (b) A prescribed fee has been paid; and
 - (c) An application in terms of this section has been submitted.
- (6) The Officer-in-charge must, where practicable, take into account the customs of the deceased and the people responsible for the burial.

4. RESERVATION OF A GRAVE

- (1) An application for the reservation of a grave must be made to the Officer-in-charge.
- (2) A surviving spouse of the deceased may apply for the reservation of an adjoining grave.
- (3) In the event of persons other than the applicant utilizing a reserved grave, the Officer-in-charge must allocate another grave to the applicant within the cemetery.
- (4) A grave will only be reserved upon payment of the prescribed fee.

5. POSTPONEMENT OR CANCELLATION OF A BURIAL

- (1) An applicant must give notice of postponement or cancellation of a burial on a duly completed application form to the Officer-in-charge at least one working day before the burial, for approval.
- (2) In the case of a cancellation of a burial:
 - (a) The applicant will not be refunded for costs incurred in opening an existing grave;
 - (b) The applicant will only be refunded for costs incurred in opening a new grave.

6. NUMBER OF BODIES IN A COFFIN

Only one body is allowed in a coffin for burial or cremation.

7. BURIAL AND SUBSEQUENT BURIALS

(1) Burial must take place only in a grave allocated by the Officer-in-charge.

(2) Subject to paragraph (a), no more than one burial may be permitted in a grave.

(a) A second burial may be allowed only if:

- (i) An application has been made to the Officer-in-charge and written permission has been granted;
- (ii) The grave is of a depth of at least 270 cm unless in the case of the burial of a still-born child; and
- (iii) A prescribed fee has been paid;

(3) A person who has been given permission for a second burial must:

- (a) Give at least two days notice; and
- (b) At his or her own costs, remove and subsequent to the burial, rehabilitate all memorial work on such a grave.

8. PRIVATE RIGHTS

(1) The holder of private rights to a grave includes:

- (a) A person who purchased a grave or who received the grave as a gift from the purchaser and whose name appears in the register of the Council;
- (b) A person who paid the burial tariffs in respect of the first burial in the grave;
- (c) A person to whom private rights to a grave have been transferred; and
- (d) A person who legally inherited such private rights.

(2) The private rights to a grave are transferable, but such transfer becomes effective only upon registration by the Council.

(3) If there is a dispute about the holder of private rights, the dispute must be referred to the Officer-in-charge for determination.

9. SIZES OF GRAVES

Subject to the provisions of section 10 the standard size of a grave is as follows:

- (a) An adult's grave is 230 cm in length, 90 cm in width and 200 cm in depth; and
- (b) A child's grave is 150 cm in length, 70 cm in width and 150 cm in depth.

10. ENLARGING AND DEEPENING A GRAVE

- (a) An applicant for a burial may, by giving at least 24 hours notice before the burial, request that a grave be enlarged or deepened.
- (b) If a coffin is too big for the size of an adult grave, such grave must be enlarged to accommodate the coffin.
- (c) If a child's coffin is too large for a child's grave it must be buried in an adult's grave, on payment of the prescribed fee applicable to an adult grave.

11. COFFINS

- (a) Coffins to be placed in a grave must be made of natural wood or other material.
- (b) Coffins intended for cremation must be constructed mainly of timber or wood derivatives, or other combustible material.

12. COVERING OF COFFINS

- (1) Every coffin must be covered with at least 30 cm of soil immediately after burial.
- (2) There must be at least:
 - (a) 120 cm of soil between a coffin of a buried adult and the surface of the ground; or
 - (b) 90 cm of soil between a coffin of a buried child and the surface of the ground.
- (3) The provisions of paragraph (2) do not apply to burial in a tomb.

CHAPTER 3

FUNERALS

13. RELIGIOUS OR MEMORIAL SERVICES

A person who desires to have a religious or memorial service at a cemetery or crematorium must apply to the Officer-in-charge and pay the prescribed fee.

14. CONTROL OF HEARSE AT THE CEMETERY

No person in the cemetery may:

- (a) Drive a hearse or cause a hearse to be driven in a cemetery except on a designated roadway;
- (b) Park a hearse or leave a hearse stationary on an internal cemetery roadway after the coffin has been removed from the hearse; or
- (c) Park a hearse in such a manner that it interferes with other burials in progress.

15. CONVEYANCE OF COFFINS AND BODIES

- (a) An applicant in terms of section 4 is responsible at own cost for ensuring that a coffin is conveyed to the cemetery for burial or to the crematorium for cremation.
- (b) No person may in any street, cemetery, crematorium or other public place convey a body in a manner intended to, or which may cause offence or disrespect.

16. INSTRUCTIONS AT CEMETERIES

- (1) The Officer-in-charge at the cemetery may issue instructions relating to:
 - (a) The parking of vehicles;
 - (b) The procession of a funeral party;
 - (c) The duration of a service or ritual within the cemetery precincts.
- (2) Every person taking part in a funeral procession at the cemetery or attending a cremation service must comply with all reasonable instructions of the Officer-in-charge.

17. DURATION OF SERVICE OR RITUAL

No person must occupy a chapel at a cemetery for the purpose of a funeral or cremation service, ceremony or ritual for more than 30 minutes, without the permission of the Officer-in-charge and payment of the prescribed fee.

18. HOURS FOR BURIAL

- (a) A burial service, ceremony or ritual must ordinarily begin and be completed between the hours of 08h00 and 15h00.
- (b) The Officer-in-charge may, on such conditions as he or she may determine, and on payment of the prescribed fee, give permission for such service, ceremony or ritual to continue outside the hours stipulated in paragraph (a).
- (c) If the applicant requests the Council to provide the service outside the stipulated hours, the Council may provide such service on payment of the prescribed after-hours tariffs, subject to such conditions as the Officer-in-charge may determine.

CHAPTER 4

RE-OPENING OF GRAVES AND EXHUMATIONS

19. CONDITIONS OF EXHUMATIONS

- (1) No person may exhume or cause to be exhumed a body without the written consent of the Council, which shall for this purpose be represented by the City Manager or his assignee.
- (2) Whenever an exhumation is to take place, the Officer-in-charge must inform the Provincial Commissioner of the South African Police Service.
- (3) A member of the South African Police Service must be present when an exhumation is being conducted.
- (4) An exhumation must not take place when the cemetery is open to the public and must take place under the direct supervision of the Officer-in-charge.
- (5) If remains are to be exhumed from any grave, only the undertaker commissioned for the purpose, under the supervision of the Officer-in-charge, may cause the grave to be excavated for such exhumation.

- (6) If a grave is to be excavated for exhumation, the Officer-in-charge must be given 48 hours written notice before the time of exhumation. The authority for exhumation and the prescribed fee must accompany such notice.
- (7) A person who wishes to exhume the remains of a pauper or indigent person must pay to the Council the costs incurred by the Council at the time of burial.
- (8) The person carrying out the exhumation must ensure that the body and grave are properly disinfected and deodorized.
- (9) If there is proof of illegal burial, the Officer-in-charge must, in the presence of the South African Police Service:
 - (a) Immediately exhume the body; and
 - (b) Take it to a government mortuary for investigation.
- (10) A grave of victims of conflict and a grave which is older than 60 years may only be exhumed with the permission of South African National Heritage Resources Agency.
- (11) A Commonwealth War grave must be exhumed according to section 3 of the Commonwealth War Graves Act, 1992 (Act No.8 of 1992).

20. EXHUMATION AND REBURIAL

- (1) The Council may, if a body has been buried in contravention of this by-law, cause the body to be exhumed and re-buried in another grave.
- (2) The relatives of the deceased must be:
 - (a) Notified of the intended exhumation and re-burial; and
 - (b) Allowed to attend.

21. SCREENING OF EXHUMATION

- (a) The grave from which the body is to be exhumed must be screened from view of the public during the exhumation.
- (b) The person carrying out the exhumation must provide a coffin (other the coffin from which the body is exhumed) for each body or remains.

CHAPTER 5**CARE OF GRAVES****22. GARDENING AROUND GRAVES AND OTHER OBJECTS ON GRAVE**

- (1) The Council is responsible, within its means, for keeping cemeteries clean unless this by-law provides otherwise.
- (2) No person may:
 - (a) Plant, cut or remove plants, shrubs or flowers on a grave without the permission of the Officer-in-charge; or
 - (b) Plant, cut or remove plants, shrubs or flowers on the berm section.
- (3) A person may only erect, place or leave an object or decoration on a grave during the first 30 days following the burial.
- (4) Natural or artificial flowers contained in receptacles may be placed on a grave at any time, but in a grave within a berm section or with a headstone, such flowers may only be placed in the socket provided.
- (5) The Officer-in-charge may –
 - (a) Remove all withered natural flowers, faded or damaged artificial flowers and any receptacle placed on a grave; or
 - (b) 30 days after publishing a general notice remove all objects of decoration, if it is in the public interest.
- (6) The Council is not liable for any loss or damage to any object on a grave unless such loss or damage is as a result of the negligence of employees of the Council.

CHAPTER 6**MEMORIAL SECTION****23. ERECTION OF MEMORIAL WORK**

- (1) A person intending to erect a memorial work must make an application on the applicable form submitted to the Officer-in-charge.
- (2) Such application must be made not less than five working days before the date of erection.

- (3) Memorial work may only be erected during working hours but may, with the approval of the Officer-in-charge be erected outside working hours.
- (4) No person may -
- (a) Erect memorial work or bring material into a cemetery for the purpose of erecting memorial work, without the written consent of the Officer-in-charge;
 - (b) Remove memorial work for additional inscriptions or other alterations without the consent of the Officer-in-charge; or
 - (c) Erect a memorial work on a Saturday, Sunday or a public holiday, without the written consent of the Officer-in-charge.
- (5) The Council is not liable for damage to memorial work resulting from any subsiding soil.
- (a) A person erecting a memorial work must at the request of the Officer-in-Charge produce the written consent.
 - (b) Memorial work or material to be used in the erection of such work must not be conveyed in a cemetery or crematorium in a manner that may damage the roadways, pathways, lawns, grounds or other memorials.
 - (c) Any surplus material or rubble, resulting from the erection of any memorial, work must be removed by the person responsible for such erection, immediately after completion.

24. INFERIOR MEMORIAL WORK

The Council may prohibit the erection of a memorial work or may remove erected memorial work which is:

- (a) Of inferior workmanship or quality;
- (b) Is indecent, offensive or objectionable; or
- (c) In contravention of these by-laws, without compensating the owner.

25. INSCRIPTION ON MEMORIAL WORK

- (1) Any memorial work must display the number assigned to the grave by the Officer-in-Charge, in permanent and visible markings:
- (a) On the side of the base of the memorial work;
 - (b) On the upper surface, in the lower left hand corner of a tablet erected on a grave in a landscape section.

- (2) The name of the maker, designer or erector of the memorial work may appear on the work and must be placed at the base of the memorial work.

26. DISMANTLING OF MEMORIAL WORK

- (1) Only a holder of private rights or a person authorised in writing by the holder of such rights may with the written permission of the Officer-in-charge dismantle, alter or disturb any memorial work on a grave.
- (2) Dismantled memorial work must either be removed from a cemetery or be left on the grave on which such memorial work had been erected.
- (3) The officer-in-charge may in the case of a second or subsequent burial in such grave permit memorial work to be left elsewhere in the cemetery for a period not exceeding 30 days after such burial.
- (4) The person dismantling the work must immediately after the work is completed remove any surplus material, or rubble resulting from the dismantling of any memorial work.
- (5) If a holder of rights or person referred to in paragraph (1):
- (a) Fails to re-erect dismantled memorial work within 30 days after it was dismantled; or
 - (b) Such memorial work is left within the cemetery in contravention of subsection (2), the Council may give 30 days written notice to such holder of rights or person, instructing him or her to remove such memorial work from the cemetery with any rubble resulting there from, at his or her own expense or to re-erect such memorial work.
- (6) If any memorial work has:
- (a) been damaged;
 - (b) become a danger to the public; or
 - (c) been erected in contravention of these by-laws,
- the Council may give written notice to the holder or person, instructing him or her, at his or her own expense, within a period specified in the notice, to:
- (i) alter or make such memorial work safe so that it complies with the provisions of these by-laws;
 - (ii) dismantle and remove such memorial work from the cemetery together with all rubble resulting there from.
- (7) If such holder or person fails to comply with a notice in terms of subsection (5) or (6), the Council may:

(a) re-erect the memorial work;

(b) dismantle and dispose of the memorial work and remove any rubble resulting there from; or

(c) make the memorial work safe,

and such holder or person will be liable for any costs incurred by the Council.

(8) The Council may without giving any notice, or incurring any liability to the holder of rights or person:

(a) dismantle the memorial work and remove it and any rubble resulting there from, except memorial work classified as National Heritage; or

(b) make the memorial work safe,

if such memorial work has become so dangerous to the public that immediate steps to safeguard the public are essential.

(9) After the Council has acted in terms of paragraph (8), it must immediately, in writing, notify the holder of rights or person that, unless he or she reclaims the memorial work from the cemetery within a specified period, the Council will dispose of the memorial work.

(10) Such holder of rights or person is liable for costs incurred by the Council.

(11) If the holder of rights or person fails to pay the costs or to reclaim the memorial work dismantled by the Council, the Council may dispose of such memorial work in any manner it deems fit.

(12) If any proceeds are derived from the disposal, such proceeds will be offset against the cost of the dismantling, removal, storing and disposing of memorial work and rubble resulting there from.

27. GENERAL REQUIREMENTS FOR MEMORIAL WORK

(1) Memorial work must be constructed or made of durable material, with a life expectancy of at least 25 years with the approval of the South African Bureau of Standards approved.

(2) Any person erecting memorial work in a cemetery or crematorium must do so with the approval of the Officer-in-charge.

(3) A person erecting memorial work must comply with the following requirements:

- (a) When joining any part of the memorial work to any other part of the memorial work the person must use copper or galvanized iron pins as follows:
- (i) for memorial work up to a height of 500mm, two or more pins of at least 5mm thick and 100mm long;
 - (ii) for memorial work 501mm up to a height of 1000mm two or more pins at least 10mm thick and 200mm long; or
 - (iii) for memorial work 1001mm and higher at least two or more pins 20mm thick and 300mm long;
- (b) Any part of memorial work which rests on the ground, stone or foundation must be properly secured and bedded;
- (c) A material of uneven thickness must not be used;
- (d) The undersides of every flat memorial work and the base of every memorial work must be sunk at least 50mm below the natural level of the ground;
- (e) A border which is more than 225mm above the surface of the ground or more than 200mm deep must not be used without the consent of the Council;
- (f) All memorial work and border stones must be securely clamped with round copper or galvanized iron clamps;
- (g) All memorial work up to 150mm in thickness must be securely attached to the base;
- (h) All the components of memorial work must be completed before being brought in a cemetery;
- (i) Footstones must consist of one solid piece;
- (j) In all cases where memorial work rests on a base:
- (i) such memorial work must have a foundation;
 - (ii) such memorial work must be set with cement mortar;
 - (iii) the bottom base of a single memorial work must not be less than 900mm long 220mm wide x 250mm thick and that of a double memorial work not less than 2286mm long x 200mm wide x 250mm thick; and
 - (iv) if loose stone chips are placed on a grave, the level of such stone chips must not be higher than 10mm below the level of the surrounding kerbstones.

28. REQUIREMENTS FOR MEMORIAL WORK IN LAWN SECTION

The following provisions apply to memorial work and graves in a Lawn Section:

- (a) The dimensions of the base of any headstones on an adult's grave must not exceed 900mm in length and 260mm in width, but if the base of the headstone is erected over two adjoining graves, such base must not exceed 2200mm in length and 260mm in width;
- (b) The dimensions of the base of any headstone of a child's grave must not exceed 610mm in length and 260mm in width, but if the base of the headstone is erected over two adjoining graves such base must not exceed 1200mm in length and 260mm in width;
- (c) No portion of any headstone must extend beyond the horizontal dimensions of its base;
- (d) Headstones must be erected on the concrete berms supplied by the Council, except in the case of a temporary erection where the applicant must provide a foundation suitable to support the headstone, until the Council has installed the berm;
- (e) No part of any memorial work must exceed 1500mm in height above the berm;
- (f) Any headstone must be so positioned that the front edge of the headstone is at least 130mm from the edge of the berm;
- (g) No object other than a headstone which may incorporate more than two sockets for receptacles for flowers must be placed on any grave; and
- (h) A vase in which natural flowers or artificial flowers and foliage may be placed in a socket built in the headstone and such vase must not exceed 300mm in height;
- (i) A kerb demarcating any grave and a slab covering are not permitted.

29. REQUIREMENTS FOR MEMORIAL WORK IN MEMORIAL SECTION

The maximum horizontal measurements of any memorial work erected on a grave in a memorial section must:

- (a) In the case of an adult's grave, be 2500mm in length and 1050mm in width; or
- (b) In the case of a child's grave, be 1500mm in length and 900mm in width.

30. REQUIREMENTS FOR MEMORIAL WORK IN LANDSCAPE SECTION

- (1) The Council may set aside a section in a cemetery as a landscape section;
- (2) Memorial work erected on a grave in a landscape section:
 - (a) Must not exceed 500mm in length or 500mm in width;
 - (b) Must be a minimum of 30mm thick; and
 - (c) Must not be made of ferrous material.
- (3) The memorial work must be embedded horizontally on the ground level on a suitable foundation.
- (4) Where memorial work is restricted to a plaque or memorial slab, 500 mm by 500mm, such plaque or memorial slab must be placed horizontal at 30 mm below grass level.

CHAPTER 7

CREMATIONS

31. APPLICATION FOR CREMATION

- (1) A person intending to cremate human remains must submit a duly completed application form supplied by the Officer-in-charge for approval not later than 15h00 a day before the intended date of cremation and such application must be accompanied by:
 - (a) The prescribed documentation;
 - (b) A prescribed fee;
 - (c) A burial or removal order issued in terms of the Births and Deaths Registration Act, 1992; and
 - (d) A death certificate.
- (2) If all the above requirements are met, the Officer-in-charge must approve such application.
- (3) The cremation must only take place in a legally operational crematorium.
- (4) If the application is made in terms of paragraph (1) in respect of a body of a person:
 - (a) Who at the time of death was suffering from a communicable disease as defined in section 1 of the Health Act; or
 - (b) In whom at any time a pacemaker or radioactive material was inserted,the applicant must clearly indicate this fact and in the case of a body referred to in (b), whether such pacemaker or radioactive material was removed from the deceased.

32. CREMATION TIMES

- (1) Cremation may take place from Monday to Saturday between 09h00 and 14h00 at the ordinary tariff prescribed by Council from time to time.
- (2) No cremation may take place on the good Friday and Christmas public holidays.
- (3) Despite the provisions of subsection (1), the Officer-in-charge to whom an application is made, may if he or she is satisfied that the case is one of emergency permit cremation outside cremation time on payment of prescribed fee.

33. PROVISION OF RECEPTACLES

- (1) The applicant must provide a receptacle with full names of the deceased for receiving ashes, unless such ashes are to be buried by the Council.
- (2) A receptacle which is intended to be placed in a niche in the columbarium must be made of wood, stone or other suitable material and must be of such a size and design as to fit readily into such niche.
- (3) An inscription plate may be affixed to such a receptacle, or the niche may be closed with a suitable marble or other plaque.

34. ASH COLLECTION AND DISPOSAL

- (1) After cremation the ashes must be entrusted to the care of the person who applied for the cremation, should he or she so desire if not, be kept by the owner of the crematorium.
- (2) The person collecting the ash must indicate in the duly completed application forms the quantity of ash to be retained for collection.
- (3) If there are no express arrangements for burial or safekeeping, the owner of a crematorium may bury or scatter the ashes in a garden of remembrance.

35. BURIAL AND EXHUMATION OF ASHES

- (1) A person who wants to bury ashes in a grave, exhume ashes from a grave or scatter ashes must make an application to the Officer-in-charge.
- (2) The Officer-in-charge must, on payment of a prescribed fee, give written permission to the applicant for burial, exhumation or scattering of ashes respectively, and prepare such grave for burial or exhumation of ashes.
- (3) An ash grave in a crematorium section or wall of remembrance must measure 610mm in length and 610mm in width.

36. USE OF NICHEs AND SPACES, AFFIXING OF MEMORIAL

- (1) Ashes may be deposited in a columbarium or garden of remembrance if an application accompanied by a prescribed fee is made to the Officer-in-charge and if the Officer-in-charge gives written permission.
- (2) A niche or a space abutting on a path in a garden of remembrance or a niche or a space in a memorial wall, must not be used for storing ashes or for affixing memorial

work, without the consent of the Officer-in-Charge and payment of the prescribed fee.

- (3) Identity plaques must be made of material approved by the Officer-in-charge and affixed simultaneously with the placing of the ashes.
- (4) Ashes and plaques may be removed with the consent of the Officer-in-charge.
- (5) Flower holders may be affixed to the plaque only with the consent of the Officer-in-charge.

37. MEMORIAL WORK IN CREMATORIA

- (1) A person may erect a memorial work in a crematorium in remembrance of the deceased if:
 - (a) The deceased was cremated at that crematorium; or
 - (b) He or she presents a cremation certificate from another legally operational crematorium.
- (2) Memorial work erected in a garden of remembrance must if it is intended to be placed in a space on a memorial wall or in a space encroaching on a path in a garden of remembrance, be made of marble, granite or other suitable material and measure either 230mm by 150mm by 25mm thick, or 250mm by 305mm by 25mm thick, as arranged with the Officer-in-charge.
- (3) If such memorial work is intended to seal a niche, it must be of the same material and size as to conform with the memorial work next to it and may have no items affixed to it except the lettering and/or photographic image of the deceased.
- (4) If such memorial work is intended for erection on a grave, it must not exceed 610mm in length, 610mm in width and 1,2m in height.
- (5) Memorial work may only be removed from or affixed to a memorial wall or to a space abutting on a path in the garden of remembrance with the written consent of the Officer-in-charge.

38. BOOK OF REMEMBRANCE, MEMORIAL CARDS AND MINIATURE BOOKS

- (1) If the Council provides a book of remembrance in a cemetery or crematorium, a memorial inscription may be entered in such book on application to the Officer-in-charge and on payment of a prescribed fee.
- (2) If an inscription is entered in the book of remembrance an inscription memorial card or an inscribed miniature may be purchased if it is available, on payment of a prescribed fee.

39. DUPLICATE CREMATION CERTIFICATES

A person may obtain a duplicate cremation certificate on application and on payment of a prescribed fee to the Officer-in-charge.

CHAPTER 8

PAUPERS AND INDIGENT PERSONS

40. PAUPERS' AND INDIGENT BURIALS

- (1) A person making an application for an indigent or paupers' burial must make a declaration to that effect.
- (2) A pauper or an indigent person shall only be buried or cremated according to the conditions determined by the Council from time to time.
- (3) If a pauper or an indigent person is cremated the ashes must be retained by the Council for a period not exceeding 12 months.
- (4) If ashes are not claimed within the period of 12 months, they may be buried in an ash grave specifically provided by Council for that purpose.

CHAPTER 9

GENERAL

41. PROHIBITED ACTS

- (1) No person:
 - (a) under the age of 16 years may enter any cemetery or crematorium except when accompanied by an adult or with the consent of the Officer-in-charge;
 - (b) may enter or leave any cemetery or crematorium, except by the gateway provided;
 - (c) may enter any office or enclosed place in a cemetery or crematorium, where entry is prohibited without the consent of the Officer-in-charge, which may be

given only when such person is attending business connected with such cemetery or crematorium.

(2) No person must, within any cemetery or crematorium:

- (a) interfere with any fountain, statue, monument, equipment, fence, grave or other Council property;
- (b) pick, damage, deface or destroy any flower, plant or seed;
- (c) damage, deface or remove any memorial work, grave, building, fence or fixtures;
- (d) throw litter outside containers provided by the Council for that purpose;
- (e) sit, stand, walk, climb, draw or write on any grave or memorial work;
- (f) swim, bath or wash himself him or herself or any animal in a pond, fountain, artificial watercourse, dam or stream;
- (g) reside in a cemetery or, without the written consent of the Officer-in-charge, build any structure or encroach on any land;
- (h) capture, chase, shoot at or interfere with any fish, bird or animal except where licensed to do so, or take, touch or damage birds' eggs or nests;
- (i) light any fire or burn any object unless there is a special provision made by the Council;
- (j) drive, ride or park any vehicle, bicycle, tricycle or push-cart, wear roller blades or draw or propel any vehicle, except in the places and at the times referred to in these By-laws;
- (k) drive or ride any vehicle, except in the places referred to in paragraph (j) at a speed exceeding 15 km per hour;
- (l) carry on or solicit business, hold any demonstration or perform an activity which is not normally associated with a cemetery or crematorium;
- (m) cause a nuisance or commit any offensive or indecent act;
- (n) play any game except in designated areas;
- (o) use a facility provided for the opposite sex;
- (p) brew, sell or drink alcohol or abuse drugs;

- (q) play any musical instrument without the written consent of the Officer-in-charge;
 - (r) deliver a public speech except for a funeral service or cremation, without the written consent of the Officer-in-charge,
 - (s) do anything which may endanger or cause disturbance to any person;
 - (t) hold organized functions, advertise, dig any hole, trench or place any tent, caravan, booth screen, stand or any construction or obstruction, without the written consent of the Officer-in-charge;
 - (u) undertake any community or voluntary work, without the written consent of the Officer-in-charge;
 - (v) make any film, without the written consent of the Officer-in-charge, and payment of the prescribed fee;
 - (w) remain between sunset and sunrise without the written consent of the Officer-in-charge;
 - (x) bring or allow an animal, except a guide dog, without the consent of the Officer-in-charge;
 - (y) hinder, obstruct or resist the Officer-in-charge or any officer of the Council in the performance of his or her duties or in the exercise of any authority assigned to him or her by or in terms of these By-laws.
- (3) Any animal found in a cemetery may be impounded and must be released on payment of a prescribed fee.

42. PENALTY CLAUSE

Any person who:

- (a) Contravenes any provision of this By-law;
- (b) fails to comply with any notice issued in terms of this By-Law;
- (c) fails to comply with any lawful instruction given in terms of this By-law; or
- (d) obstructs or hinders any authorized representative or employee of the Council in the execution of his or her duties under this By-law,

Shall be prosecuted for an offence and liable on conviction to a fine not exceeding five thousand Rand or, in default of payment of such a fine, to imprisonment for a period not exceeding one month.

43. CONFLICTING BY-LAWS

- (1) In the event of a conflict between this By-law and any other By-law, this By-law prevails and such other By-law becomes inoperative and unenforceable for as long as the conflict remains.
- (2) Where possible, when considering an apparent conflict between this By-law and any other By-law, a reasonable interpretation that avoids a conflict must be preferred over any alternative interpretation that results in a conflict.

44. DATE OF COMMENCEMENT

This By-law commences on the date of publication in the Eastern Cape Provincial Gazette.

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