

Mpumalanga, South Africa

Mpumalanga Cemeteries, Crematoria and Exhumation of Bodies Act, 2005

Act 8 of 2005

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Mpumalanga South Africa

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Act 8 of 2005

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Assented to on 28 November 2006

Commenced on 17 September 2007 by Mpumalanga Cemeteries, Crematoria and Exhumation of Bodies Act, 2005: Commencement

*[This is the version of this document from 27 December 2006
and includes any amendments published up to 7 March 2024.]*

To provide for the establishment and operation of cemeteries; to provide for the establishment and the maintenance of crematoria; to provide for the exhumations of bodies and to provide for the prohibition of desecration and destruction of graves to repeal certain laws which have become obsolete; and to provide for matters incidental thereto.

BE IT THEREFORE ENACTED by the Provincial Legislature of Mpumalanga as follows:

Part 1 – Interpretation

1. Definitions

In this Act, unless the context indicates otherwise—

“**body**” means the dead body of a human being and includes—

- (a) the body of a still-born child; and
- (b) any human remains; and “corpse” has a corresponding meaning;

“**by-laws**” means legislation passed by the council of a municipality binding in the municipality on persons to whom it applies;

“**cemetery**” means any area of land which has been declared to be a cemetery in terms of [section 2](#);

“**cremate**” means to reduce any human remains to ashes by burning or the application of heat, and “cremation” has a corresponding meaning;

“**crematorium**” means any building fitted with appliances for cremation, including everything essential, incidental or ancillary thereto and includes any structure which in any special circumstances may be approved as a crematorium;

“**grave**” means an excavation in which human remains have been placed for purposes of burial and includes but is not limited to tombstones;

“**human remains**” means any human corpse or any tissue or bone which is identifiable as having formed part of a corpse, but does not include the ashes remaining after a corpse has been cremated;

“**inspector**” means a person appointed in terms of [section 8](#);

“**municipality**” means a municipality as defined in section 2 of the Local Government: Municipal Systems Act, 2000 ([Act No. 32 of 2000](#));

“**prescribed**” means prescribed by regulations;

“**public place**” means a public place as defined in section 1 of the Land Survey Act, 1997 ([Act No. 8 of 1997](#));

“**public road**” means any road declared a public road in terms of any law, but does not include a national road as defined in the National Roads Act, 1971 ([Act No. 54 of 1971](#));

“**Province**” means the Mpumalanga Province established in terms of section 103 of the [Constitution of the Republic of South Africa, 1996](#);

“**Provincial Gazette**” means the *Provincial Gazette* of the Province;

“**this Act**” includes regulations made in terms of [section 15](#); and

“**traditional council**” means a traditional council established or deemed to have been established in terms of the Mpumalanga Traditional Leadership and Governance Act, 2005 ([Act No. 3 of 2005](#)).

Part 2 – Establishment and operation of cemeteries

2. Establishment of cemetery

A municipality may, in the prescribed manner, establish and operate one or more cemeteries in its area of jurisdiction: Provided that a cemetery may not be established or operated—

- (a) on privately owned land without the prior written consent of the owner or legal occupier of such land;
- (b) in the area of jurisdiction of a traditional council without the prior written consent of the traditional council concerned which consent may not be unreasonably withheld.

3. Permission for burial of persons

Whenever a person dies, a municipality must, if an application is made to it by the person responsible for the burial of the deceased person, permit the burial of such deceased person in a cemetery operated by such municipality, subject to—

- (a) the availability of a suitable burial plot; and
- (b) the payment of such fees as may be payable in terms of applicable by-laws or as prescribed.

4. Restrictions on burial of persons

A municipality may, if an application is made to it, on payment of fees payable in terms of applicable by-laws, set aside a cemetery or portion of such cemetery for the burial of the bodies of persons who—

- (a) were ordinarily resident in the area specified in such an application;
- (b) were members of a particular religious belief or group of religious beliefs; or
- (c) were members of a particular faith or religious movement or a group of such religious movements:

Provided that nothing contained herein permits any such setting aside to be done on the basis of the race or language of the deceased or applicant.

Part 3 – Establishment and operation of crematoria

5. Establishment and maintenance of crematorium

- (1) A municipality may, in the prescribed manner, establish and maintain a crematorium in its area of jurisdiction: Provided that a crematorium may not be established—
 - (a) on privately owned land without the prior written consent of the owner or legal occupier of such land;
 - (b) in the area of jurisdiction of a traditional council without the prior written consent of the traditional council concerned which consent may not be unreasonably withheld.
- (2) A municipality may, subject to such conditions as may be considered necessary, in writing grant a person authority to establish and maintain a crematorium and to regulate and control the use thereof including the authority to determine fees for the use of such crematorium.

6. Conditions for establishment of crematorium

- (1) No crematorium may be established unless the site, plans and specifications thereof have been approved by the municipality in whose area of jurisdiction the crematorium will be established.
- (2) No person may operate a crematorium unless the relevant municipality has issued a certificate of registration in respect of such crematorium as prescribed.
- (3) The certificate referred to in subsection (2) must be issued only if the municipality is satisfied that a crematorium has been established in accordance with this Act and that it is properly equipped for the purpose for which it is intended.
- (4) A municipality may issue a certificate of registration only to a person who has obtained the authority contemplated in [section 5\(2\)](#).

7. Site of crematorium

A crematorium may not be established within—

- (a) two hundred meters of the boundary of private land without the written consent of the owner of such land or legal occupier;
- (b) fifty meters of any public road, street, thoroughfare or public place.

8. Appointment and powers of inspector

- (1) A municipality must, for the purposes of this Act, appoint one or more persons as inspectors on such conditions as may be considered necessary.
- (2) A person appointed as an inspector in terms of subsection (1) must be issued with a certificate of appointment.

9. Routine inspection of crematorium

- (1) Before issuing a certificate referred to in [section 6\(2\)](#), a municipality may require that the premises to be utilized as crematorium, the equipment and appliances, be inspected by an inspector.

- (2) The inspector may enter a crematorium in respect of which a certificate has been issued in terms of [section 6](#), at any reasonable time and—
 - (a) inspect such crematorium in order to ascertain whether it is maintained and managed in a proper, decent and orderly manner and whether the conditions imposed are being observed and complied with;
 - (b) question any person on the premises whom he or she believes may have information relevant to the inspection;
 - (c) require the person in charge of the crematorium at the time to produce, for inspection or for the purpose of obtaining copies or extracts thereof, any document that such person is required to maintain in terms of any law; and
 - (d) remove or take samples of any substance relevant to the inspection.
- (3) The inspector may issue a compliance notice to a person in charge of the premises if a provision of this Act has not been complied with.
- (4) An inspector who removes any sample as contemplated in subsection (2)(d) must—
 - (a) issue a receipt for the sample of any substance so removed or taken to the person in charge of the crematorium; and
 - (b) subject to any applicable law, return it as soon as practicable after achieving the purpose for which it was removed.

10. Entry and search of crematorium with warrant

- (1) An inspector accompanied by a police officer may, on the authority of a warrant issued in terms of subsection (4) enter any crematorium specified in the warrant, and—
 - (a) inspect, photograph, copy, test and examine any document, record, object or material, or cause it to be inspected, photographed, copied, tested or examined;
 - (b) seize any document, record, object or material if he or she has reason to suspect that it might be used as evidence in a criminal trial;
 - (c) examine any activity, operation or process carried out in the crematorium.
- (2) An inspector who removes anything from the crematorium being searched must—
 - (a) issue a receipt for anything removed from the crematorium to the owner or person in charge of the crematorium; and
 - (b) unless it is an item prohibited in terms of any applicable law, return it as soon as practicable, after achieving the purpose for which it was removed.
- (3) Upon the request of an inspector acting in terms of a warrant issued in terms of subsection 4, the owner or person in charge of the crematorium or any other person present in the crematorium must—
 - (a) make available or accessible or deliver to the inspector, any document, record, object or material which pertains to an investigation contemplated in subsection (1) and which is in the possession or under the control of the owner or the person in charge;
 - (b) furnish such information as he or she has with regard to the matter under investigation; and
 - (c) render such reasonable assistance as the inspector may require to perform his or her functions in terms of this Act efficiently.

- (4) A warrant contemplated in subsection (1) should be issued by a judge or a magistrate—
 - (a) in relation to premises on or from which there is reason to believe that a contravention of this Act has been or is being committed;
 - (b) if it appears from information obtained under oath or affirmation that there are reasonable grounds to believe that there is evidence available in or upon such premises of a contravention of this Act.
- (5) The warrant issued in terms of subsection (4) may impose restrictions on the powers of the inspector.
- (6) A warrant issued in terms of this section—
 - (a) remains in force until—
 - (i) it is executed;
 - (ii) it is cancelled by the person who issued it or, if such person is not available, by any person with like authority;
 - (iii) the expiry of one month from the day of its issue; or
 - (iv) the purpose for the issuing of the warrant has elapsed,whichever occurs first; and
 - (b) must be executed by day unless the person who issue the warrant authorizes the execution thereof by night.
- (7) No person can be held personally liable for any loss or damage arising out of a *bona fide* action by a police officer or inspector under this section.
- (8) An inspector exercising any power conferred upon him or her in terms of this Act must, on demand produce the certificate of appointment issued to him or her in terms of [section 8](#).
- (9) An inspector exercising any power conferred upon him or her in terms of this Act must, on demand produce the warrant.

11. Entry and search of crematorium without warrant

An inspector accompanied by a police officer may, without a warrant exercise any power referred to in [section 10](#) if—

- (a) the person in charge at the time so consents to such exercise; or
- (b) there are reasonable grounds to believe that a warrant would be issued in terms of [section 10](#) (4) and that the delay in obtaining the warrant would defeat the object of the search.

12. Closing of crematorium

- (1) If an inspector, after inspection of a crematorium, certifies that such crematorium is defectively or inadequately constructed or equipped, or is in a state of disrepair or constitutes a nuisance, the relevant municipality may issue a closing order requiring that such crematorium or part thereof be closed and remain closed permanently or until any instruction given by the municipality to remedy such defect, inadequacy or disrepair or to abate such nuisance, has been complied with.
- (2) If the owner or person in charge of a crematorium contravenes or fails to comply with any provision of this Act or if the relevant municipality is satisfied that such crematorium is not maintained or managed in a fit and proper manner, the municipality may issue a closing order requiring that such cremation be closed and remain closed permanently or for such period as the municipality may determine.

- (3) If a closing order in terms of subsection (1) or (2) has been issued in respect of a crematorium or part thereof, no person may perform, or permit or take in the performance of, a cremation in such crematorium or part thereof.

Part 4 – Exhumations and removal of graves

13. Prohibition of desecration, destruction or damage to graves

Subject to the provisions of any other law relating to the disposal of bodies, no person may desecrate, destroy or damage—

- (a) a grave;
- (b) a coffin or other receptacle which contains a body which has not been interred, or cause or permit such a grave, coffin or other receptacle to be desecrated, destroyed or damaged.

14. Exhumation of bodies

- (1) Subject to the provisions of any other law relating to the disposal of bodies, no person may exhume, disturb, remove or re-inter any body in a grave or cause or permit any such body to be exhumed, disturbed, removed or re-interred—
- (a) without the prior written approval of the owner, legal occupier, traditional council or the relevant municipality in which such grave is situated and the Member of the Executive Council responsible for health matters in the Province; and
 - (b) otherwise than in accordance with such conditions as may be imposed by the Member of the Executive Council responsible for health matters in the Province:

Provided that the above provisions do not apply where any such body exhumed, disturbed, removed or re-interred in consequence of, or in the course of or for the purposes of the interment of another body by or on behalf or with the permission of the person or authority having control of, and management of such cemetery.

- (2) A person who wants to obtain the approval referred to in subsection (1) must lodge a written application as prescribed with the municipality in whose area of jurisdiction such cemetery is situated.
- (3) The application referred to in subsection (2) must—
- (a) specify the place where the body which is to be exhumed, disturbed, removed or is buried, and whether such body is proposed to be re-interred, and if so, also the place where such body is proposed to be re-interred;
 - (b) state the reasons for the proposed exhumation, disturbance, removal or re-interment;
 - (c) specify the methods proposed to be adopted and the precautions proposed to be taken, to prevent any danger to health or cause for offence arising;
 - (d) be accompanied by a medical certificate as to the date and cause of death, or a certified copy of such certificate;
 - (e) be accompanied by a written approval of—
 - (i) the municipality or the traditional council in whose area of jurisdiction the body in question is interred, and of the municipality or the traditional council in whose area of jurisdiction such body is proposed to be re-interred;
 - (ii) the person in charge of the cemetery in which such body is interred and, where such body is propose to be re-interred, also the written approval of the person in charge of the cemetery in which such body is proposed to be re-interred; and

- (iii) the surviving spouse or partner of the deceased, or—
 - (aa) if there is no surviving spouse or partner, an adult child of the deceased;
 - (bb) if there is no adult child, a parent of the deceased;
 - (cc) If there is no parent, an adult brother or sister of the deceased;
 - (dd) if there is no brother or sister, the closest available adult relative of the deceased; and
 - (iv) a religious organization or a controlling body where the cemetery in which the body is interred or is proposed to be re-interred, is owned by or under the control or management of such a religious organization or is a cemetery in which such controlling body of any particular religious group has a specific interest.
- (4) Where the medical certificate or written approval contemplated in subsection (3) is not or cannot be obtained or is not granted, the written application contemplated by that section must be accompanied by—
- (a) full particulars of the effort made to obtain such certificate or approval; and
 - (b) full reasons why the inability to obtain such certificate or approval must not preclude the issuing of the written approval in terms of subsection (1) (a).
- (5) Any written approval in terms of subsection (1)(a) may be granted subject to such conditions as the relevant municipality may consider necessary.

Part 5 – General provisions

15. Regulations and by-laws

- (1) The Member of the Executive Council responsible for Local Government matters in the Province, after consultation with the municipalities, may make regulations regarding any matter that is necessary to be prescribed for the effective and efficient implementation of this Act.
- (2) Any regulation made in terms of this section must be duly promulgated in the *Provincial Gazette*.
- (3) A municipality may make by-laws with regard to any matter that is necessary for the administration of this Act within its area of jurisdiction.

16. Offences and penalties

Any person who—

- (a) contravenes or fails to comply with any provision of this Act or contravenes or fails to comply with any provision of this Act or contravenes or fails to comply with any condition imposed in terms of this Act.
- (b) willfully obstructs, resists or hinders any inspector in the exercise of his or her powers or performance of his or her duties or refuses or fails to comply to the best of his or her ability with any lawful instruction given by such inspector;
- (c) for the purpose of procuring a cremation; willfully makes a false declaration or presentation or issues a false certificate;
- (d) makes a statement to an inspector which is false in any material respect, knowing it to be false;

- (e) with intent to conceal the commission of an offence or to hinder any investigation or prosecution in connection with any alleged offence, performs or procures or takes part in the performance of a cremation or with like intent makes a declaration or issues a certificate relating to a cremation,
- is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding twelve months or to both such a fine and imprisonment.

17. Transitional arrangements

- (1) Any place which is generally utilised by the local community as being a cemetery or crematorium and which is in existence on the date on which this Act comes into operation, is deemed to have been established in terms of this Act.
- (2) Any registration certificate issued in terms of the laws repealed in this Act and which has not been withdrawn or cancelled, is deemed to have been issued in terms of this Act.

18. Repeal of laws and savings

- (1) The laws specified in the first two columns of the Schedule to this Act are hereby repealed to the extent mentioned in the third column thereof.
- (2) Anything done before the commencement of this Act under a provision of a law repealed by subsection (1) and which could have been done under a provision of this Act is regarded as having been done under the corresponding provision of this Act.
- (3) Until the Member of the Executive Council responsible for Local Government matters in the Province makes regulations in terms of [section 15](#), any regulations in force under any law repealed by subsection (1), continue to apply, notwithstanding such repeal and in so far as the existing regulations can be applied and are not inconsistent with this Act: Provided that when the Member of the Executive Council responsible for Local Government matters in the Province makes regulations relating to any of the matters referred to in [section 15](#), that part of the existing regulations relating to any matter dealt with in the regulations so made is deemed to have been repealed.

19. Short title and commencement

This Act is called the Mpumalanga Cemeteries, Crematoria and Exhumation of Bodies Act, 2005 and comes into operation on a date determined by the Premier by notice in the *Provincial Gazette*.

Schedule
Repeal of laws

No. and year of law	Short title	Extent of repeal
Ordinance No. 7 of 1925	Removal of Graves and Dead Bodies Ordinance, 1925	The whole.
Ordinance No. 8 of 1932	Cemetery Ordinance, 1932	The whole.
Ordinance No. 18 of 1965	Crematorium Ordinance, 1965	The whole.
Act No. 15 of 1985	Exhumations Act, 1985	The whole to the extent assigned to the Province.