

**MUNICIPALITY OF BEAUFORT-WEST**  
**Notice no. 147/2005**

The Council of the Municipality of Beaufort West published the sub-joined by-law relating to cemeteries, exhumations and cremations, for general notice.

**BY-LAW RELATING TO CEMETRIES, EXHUMATIONS AND CREMATIONS**

Introduction

Whereas the Municipality of Beaufort West is vested with Legislative Authority in terms of the Constitution of the Republic of South Africa (Act 108 of 1996),

AND WHEREAS the Municipality has the right to determine its own by-laws relating to cemeteries, exhumations and cremations;

Be it therefore enacted by the Municipality of Beaufort West as follows:-

*Purpose of By-Law*

To provide for the establishment and closing of cemeteries; to provide for the administration of municipal cemeteries; to regulate the burial of bodies; to prohibit the desecration, destruction and damaging of graves in cemeteries and receptacles containing bodies; to regulate the exhumation, disturbance, removal and re-interment of bodies; to regulate the cremation of bodies, and to provide for matters incidental thereto.

**1. Definitions**

In these regulations-

**“ashes”** means the cremated remains of a body;

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

- (a) the body of a still-born child, and
- (b) any human remains;

**“burial plot”** means a demarcated piece of land within a municipal cemetery destined for the burial of a body;

**“caretaker”** means a person or official of the municipality who is in charge of and who exercises control in a cemetery;

**“cemetery”** means a piece of land set aside for the burial of bodies;

**“council”** means the municipal council of the municipality;

**“crematorium”** means a facility that disposes of a human body by fire;

**“director”** means the official of the municipality who is the head of the department responsible for the administration of cemeteries and crematoria;

**“grave”** includes-

- (a) any place, whether wholly or partly above or below the level of the ground and whether public or private, in which a body is permanently interred or intended to be permanently interred, whether in a coffin or other receptacle or not, and
- (b) any monument, tombstone, cross, inscription, rail, fence, chain, erection or other structure of whatsoever nature forming part of or appurtenant to a grave.

**“indigent person”** includes a pauper;

**“municipal cemetery”** means a cemetery, the control and ownership of which is vested in the municipality.

**“municipal crematorium”** means a crematorium, the control and ownership of which is vested in the municipality.

**“municipality”** means the Municipality of Beaufort West;

**“private cemetery”** means a cemetery, the control and ownership of which is vested in a private person, religious body or church.

**“private crematorium”** means a crematorium, the control and ownership of which is vested in a private person or body.

**“Tariff Policy By-law”**, means the Tariff Policy By-law adopted by the municipality and published in Provincial Gazette 6160 of 20 August 2004.

## **ESTABLISHMENT AND CLOSING OF CEMETERIES.**

### **2. Establishment of municipal cemeteries.**

- (1) The council may establish a municipal cemetery within the municipal area.
- (2) The council must before deciding to establish a municipal cemetery-
  - (a) undertake a geophysical and other relevant scientific investigations to determine a suitable site for a cemetery;
  - (b) obtain the provisional approvals from the national or provincial departments of health and water; and
  - (c) advertise its intention to establish a municipal cemetery and invite objections or comments thereon.

### **3. Establishment of private cemeteries.**

- (1) Any person who wishes to establish a private cemetery must obtain the approval of the council
- (2) An application in terms of subsection (1) must be made on a form provided by the director and must be accompanied by the appropriate fee determined in terms of the Tariff Policy By-law.

- (3) The person applying for council's approval to establish a private cemetery must at his or her own cost-
  - (a) undertake geophysical and other relevant scientific investigations determined by the director in order to determine a suitable site for a cemetery;
  - (b) obtain the provisional approvals from the national or provincial departments of health and water;
  - (c) advertise his or her intention to establish a cemetery and invite the public to lodge objections or comments thereon with the council; and
  - (d) also obtain council's approval in terms of the town planning scheme.
- (4) No person may establish or attempt to establish a private cemetery without the council's approval.
- (5) No person may knowingly inter or cause to be interred any body in a private cemetery which has been opened or established without council's approval.

#### **4. Taking over of private cemetery by municipality.**

- (1) The municipality may take over any private cemetery within the municipal area.
- (2) The council must before deciding to take over a private cemetery, advertise its intention to take over the cemetery concerned and invite the public to lodge objections or comments thereon with the council.
- (3) Upon the taking over of a private cemetery in terms of this section-
  - (a) the ownership of all movable and immovable property and other assets connected with such cemetery shall, subject to any trusts or conditions, vest in the municipality;
  - (b) all revenue and other moneys payable or recoverable in respect of such cemetery shall be payable to and recoverable by the municipality;
  - (c) all other privileges and rights and all liabilities and obligations in respect of such cemetery shall devolve upon the municipality and the director may continue to prosecute and defend all legal proceedings instituted in respect of such cemetery and may do all things necessary or expedient in connection with such proceedings; and
  - (d) the council shall have the control and management of such a cemetery.

#### **5. Closing of cemeteries.**

- (1) The council may close any municipal cemetery or portion thereof.
- (2) The council must advertise the closure of a municipal cemetery in the Provincial Gazette and the cemetery or portion concerned must, subject to

the provisions of subsection (3), be deemed to be closed with effect from the date of publication of such closure.

- (3) The council may, notwithstanding the closing of a municipal cemetery or portion thereof and subject to such conditions as may be deemed fit, permit the interment of bodies in specified family plots in such cemetery or portion.
- (4) No person shall inter any body in a municipal cemetery or portion thereof closed in terms of subsection (1) or in a family plot in contravention of any conditions specified in terms of subsection (3).

#### **6. Use of disused cemeteries.**

- (1) The council may, after compliance with the provisions of subsection (3) and notwithstanding any condition of title, use any municipal cemetery or portion thereof which has been closed or disused for a period of not less than twenty years for such purpose as will not desecrate the ground, any body or any memorials or tombstones in such cemetery or portion.
- (2) The council may, after compliance with the provisions of subsection (3) and notwithstanding any condition of title, reverently remove to another cemetery the bodies, memorials and tombstones in any municipal cemetery or portion thereof which has been closed or disused for a period of not less than twenty years and all rights, powers and privileges had, possessed or enjoyed by any person in respect of such last-mentioned cemetery or portion shall thereupon cease.
- (3) If the council desires to act in terms of subsection (1) or (2) it must, before using any municipal cemetery or portion thereof in the manner contemplated by subsection (1) or removing any body, memorials or tombstones in accordance with the provisions of subsection (2)-
  - (a) advertise its intention so to do, and
  - (b) consider any objections lodged in accordance with the advertisement

### **MANAGEMENT OF MUNICIPAL CEMETRIES**

#### **7. Burial place for the deceased of a religious group**

The council may set aside any portion of a municipal cemetery for the burial of the deceased of any religious group or other body or community; provided that-

- (a) "religious group" shall not be construed as being a denomination, and
- (b) such setting aside shall not entitle any person to be buried in any particular place in a cemetery.

#### **8. Sale of burial plots**

- (1) The director may sell or otherwise dispose of the right of burial in plots on such conditions as council may determine from time to time, and shall issue the person thus acquiring such right with a certificate setting out the conditions attaching to such acquisition.

- (2) The holder of a right of burial may not dispose of such right except with the written permission of the director, and such holder or his next of kin may not permit any other person who has not been approved by the director to be buried in the plot in respect of which such right exists.

**9. Authority to bury**

- (1) No person shall bury a body in a municipal cemetery-
- (a) except under the authority of a written permit which may be issued by the caretaker; or
  - (b) otherwise than in accordance with the conditions specified in such permit.
- (2) An applicant for a permit referred to in subsection (1) must furnish the caretaker with-
- (a) a death certificate;
  - (b) a burial order issued in accordance with the Births and Deaths Registration Act, 1992 (Act 51 of 1992);
  - (c) the appropriate fee determined in terms of the Tariff Policy By-law; and
  - (d) such information as may be required by the caretaker.

**10. Burial time**

Except with the permission of the caretaker who must record the circumstances under which such permission is granted, no person shall bury a body in a municipal cemetery during the hours between sunset and sunrise.

**GRAVES AND BURIAL PLOTS IN MUNICIPAL CEMETERIES**

**11. Specifications for burial plots and graves**

- (1) No person may-
- (a) bury a body, unless the grave is of sufficient depth so that the top of the body, or, if contained in a coffin or container, the top of the coffin or container is not less than 1 050 mm below the surface of the ground when the grave has been filled up;
  - (b) bury more than one body in a grave, unless the grave has been dug to a sufficient depth so that paragraph (a) may be complied with and so that the first body or, if such body is in a coffin or container, such coffin or container may be covered with 100 mm of reinforced concrete or 300 mm of soil when the second body is buried, or
  - (c) remove a body from a grave in order to enlarge such grave.
- (2) The standard measurements for burial plots may be determined by the director.
- (3) The standard measurements for graves are as follows:

- (a) Adults (one body):
  - (i) Length: 2 200 mm
  - (ii) Width: 1 200 mm
  - (iii) Depth: 1 800 mm
- (b) Adults (two bodies):
  - (i) Length: 2 200 mm
  - (ii) Width: 1 200 mm
  - (iii) Depth: 2 400 mm
- (c) Children:
  - (i) Length: 1 350 mm
  - (ii) Width: 600 mm
  - (iii) Depth: 1 500 mm.

## **12. Tombstones and ornamentation**

- (1) No person may erect or place any kerb, tombstone, monument, railings or fence or any ornamentation upon a grave-
  - (a) except under the authority set out in a written permit, issued by the director;
  - (b) otherwise than in accordance with the conditions set out in such permit, or
  - (c) in such a manner as to exceed the boundaries of a burial plot.
- (2) The size (outer dimensions) of any erections on burial plots shall not exceed the following measurements:
  - (a) Adults:
    - (i) Single burial plot: 2 500 mm × 1 050 mm
    - (ii) Double burial plot: the size of two single burial plots
    - (iii) Family burial plot: the appropriate multiple of a single burial plot
    - (iv) Width of kerb: 150 mm
    - (v) Tombstones shall not be higher than 1 600 mm above the surface of the ground.
  - (b) Children:
    - (i) Single burial plot: 1 500 mm × 1 000 mm
    - (ii) Width of kerb: 150 mm
    - (iii) Tombstones shall not be higher than 1 200 mm above the surface of the ground.
- (3) An application for a permit referred to in subsection (1) shall contain such details as may be required by the director in respect of the erection concerned and the inscription to be placed thereon, and the director may refuse to issue such permit if, in his or her opinion, such erection is likely to be of poor craftsmanship or quality or is likely in any way to disfigure a cemetery or is calculated to hurt or offend the feelings of the public.

**13. Work in connection with tombstones, monuments etc.**

No person may-

- (a) use any portion of a municipal cemetery for the cutting, dressing and manufacturing of tombstones, monuments, railings, kerbs or other grave fittings except with the permission of the director or otherwise than in accordance with the conditions determined by the director;
- (b) carry out any work in connection with any kerb, tombstone, monument, railings or fence on or round a grave or bring any materials into a municipal cemetery for the purposes of such work, except during the following hours:  
Mondays to Saturdays (excluding public holidays): Sunrise to sunset, or
- (c) at any time leave any building sand, stones, builders' rubble, soil, rubbish or other debris in the municipal cemetery.

**14. Dilapidated memorial work**

- (1) Whenever the person who erected a memorial work in a municipal cemetery allows it to fall into such state of disrepair as in the opinion of the director constitutes a danger or a disfigurement in the municipal cemetery, the director may by written notice require him or her to effect such repairs as may be specified in such notice, and if such person's address is unknown such notice may be published in a newspaper circulating within the area of the municipality.
- (2) In the event of the required repairs not being effected within three months from the service or publication of such notice the director may effect the repairs or remove the memorial work without paying compensation and may recover the expense of such repair or removal from such person.

**15. Maintenance of graves and burial plots**

- (1) The holder of the right of burial in a plot in a municipal cemetery must keep that plot and the monuments, tombstones or other erections thereon in good order and repair.
- (2) The municipality may undertake the upkeep of graves at the charges determined in terms of the Tariff Policy By-law.
- (3) No person may undertake the upkeep of graves in a municipal cemetery except with the written consent of the director.
- (4) No person may-
  - (a) plant a tree or shrub on a grave site without the permission of the caretaker; or
  - (b) when cleaning a grave plot, deposit the material cleared from the grave, in the cemetery at a place other than that provided for such purpose.

- (5) The caretaker or his authorised assistant may prune, cut down, dig up or remove any shrub, plant or flower in a municipal cemetery if such is in his or her opinion unsightly.

## **16. Prohibited acts**

No person shall-

- (a) enter or leave a municipal cemetery except by the proper gates;
- (b) sit, stand or climb upon or over a memorial work, gate, wall, fence or building in a municipal cemetery;
- (c) drive a hearse in a municipal cemetery except upon the carriage ways provided for that purpose;
- (d) enter a municipal cemetery—
  - (i) with a bicycle; or
  - (ii) with any other vehicle without the permission of the caretaker;
- (e) conduct a religious ceremony or service according to the rites of any religious group in that part of a cemetery set aside for members of any other religious group;
- (f) expose or convey a body in an unseemly manner in a street, municipal cemetery or other public place;
- (g) mark, draw, scribble or erect an advertisement upon, or in any way deface a wall, building, fence, gate, memorial work or other erection in a municipal cemetery;
- (h) pick flowers in a municipal cemetery;
- (i) smoke in a municipal cemetery;
- (j) bring an animal into a municipal cemetery;
- (k) hold a demonstration or participate in such demonstration in a municipal cemetery;
- (l) create or allow to be created a nuisance in a municipal cemetery;
- (m) disrupt or allow to be disrupted any funeral proceedings in a municipal cemetery, or
- (n) discharge any fire-arm in a municipal cemetery, except as a salute at a military funeral.

## **17. Fees**

The fees payable for burials, exhumations, reinterments or any other services rendered by the municipality in a municipal cemetery or in connection with a funeral, is determined in terms of the Tariff Policy By-law



## **BURIALS IN PRIVATE CEMETRIES**

### **18. Authority to bury**

- (1) No person may bury a body in a private cemetery without the authority of the owner or person in charge of such cemetery.
- (2) An owner or person in charge of a private cemetery may only grant authority referred to in subsection (1) on production of-
  - (a) a death certificate; and
  - (b) an order issued in accordance with the Births and Deaths Registration Act, 1992 (Act 51 of 1992).

### **19. Specifications for burial plots and graves**

The provisions of sections 11(1) and (3) also apply to private cemeteries.

## **EXHUMATIONS**

### **20. Desecration of 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 in a cemetery, or
- (b) a coffin, urn or other receptacle in which is contained a body which has not been interred

or cause or permit such a grave, coffin, urn or other receptacle to be desecrated, destroyed or damaged.

### **21. Approval to exhume, disturb, remove or re-inter a body**

- (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 cemetery or cause or permit any such body to be exhumed, disturbed, removed or re-interred-
  - (a) without the prior written approval of the director, and
  - (b) otherwise than in accordance with such conditions as may be imposed by the director or by any medical practitioner appointed by the director; or
  - (c) without a court order.
- (2) Any person desirous of obtaining the written approval contemplated by subsection (1) (a) must make written application therefore and must-
  - (a) in such application-

- (i) state where the body which is to be exhumed, disturbed, removed or re-interred is interred and if and where such body is proposed to be re-interred;
  - (ii) state the reasons for the proposed exhumation, disturbance, removal or re-interment, and
  - (iii) 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, and
- (b) together with such application—
  - (i) submit a medical certificate as to the date and cause of death or a certified copy of such a certificate;
  - (ii) if the body is to be interred in a grave outside the municipal area, submit the written approval of-
    - (aa) the municipal council in whose area of jurisdiction the body concerned is interred and is proposed to be re-interred, and
    - (bb) in the case of a private cemetery, the owner or other person in charge of such cemetery in which the body concerned is proposed to be re-interred;
  - (iii) submit the written approval of-
    - (aa) the surviving spouse of the deceased person concerned;
    - (bb) if there is no such surviving spouse, an adult child of the deceased person concerned;
    - (cc) if there is no such adult child, a parent of the deceased person concerned;
    - (dd) if there is no such parent, an adult brother or sister of the deceased person concerned, or
    - (ee) if there is no such brother or sister, the nearest available adult relative of the deceased person concerned.
- (3) Where any medical certificate or written approval contemplated by subsection (2) is not or cannot be obtained or is not granted, the written application contemplated by that subsection shall be accompanied by-
  - (a) full details of the efforts made to obtain such certificate or approval, and
  - (b) full reasons why the inability to obtain such certificate or approval should not preclude the grant of written approval in terms of subsection (1).

- (4) Any written approval in terms of subsection (1) (a) may be granted subject to such conditions as the director may deem necessary or desirable and the director may, before any such approval is acted upon-
- (a) vary any condition so imposed, and
  - (b) impose additional conditions in respect of such approval.

## **CREMATIONS**

### **22. Cremation only in a crematorium**

The cremation of a body may only take place in a crematorium.

### **23. Authority to cremate**

- (1) Any person intending to cremate a body in a municipal crematorium must obtain the written approval of the officer in charge.
- (2) An application for the approval referred to in subsection (1) must be submitted not later than one working day before the intended date of cremation and must be accompanied -
- (a) a death certificate;
  - (b) the burial or removal order issued in accordance with the Births and Deaths Registration Act, 1992 (Act 51 of 1992), and
  - (c) the appropriate fee determined in terms of the Tariff Policy By-law; and
  - (d) such information as may be required by the director.
- (3) Any person intending to cremate a body in a private crematorium must obtain the written approval of the person in charge of such crematorium.
- (4) A person in charge of a private crematorium may only grant authority referred to in subsection (3) on production of-
- (a) a death certificate; and
  - (b) an order issued in accordance with the Births and Deaths Registration Act, 1992 (Act 51 of 1992).

### **24. Cremation time**

- (1) Cremation may only take place from Monday to Friday between 09h00 and 14h00.
- (2) No cremation may take place on a Saturday or Sunday or public holiday.

**25. Provision of receptacles**

The applicant must provide a receptacle for receiving ashes, unless such ashes are to be buried by the municipality

**26. Collection of ash**

- (1) After cremation the applicant must collect the ashes, unless he or she desires that it be kept at the crematorium.
- (2) If there are no express arrangements for burial or safekeeping, the officer in charge of a municipal crematorium or the person in charge of a private crematorium may bury or scatter the ashes in a garden of remembrance

**27. Disposal of ashes**

- (1) A person who wishes to bury ashes in a grave or scatter ashes must apply to the officer in charge of a municipal crematorium or the person in charge of a private crematorium.
- (2) An ash grave in a crematorium section or wall of remembrance must measure at least 300 mm in length, 200 mm in width and 200 mm in depth.

**BURIAL OR CREMATION OF INDIGENTS**

**28. Criteria**

The director must, for adoption by council, draft criteria in terms of which the council will bear the costs of an indigent person's burial.

**29. Burial of indigent persons**

- (1) A person who makes application for an indigent person's burial must make a declaration to that effect.
- (2) The director may decide whether the body of an indigent person should be buried or cremated.
- (3) If the ashes are not claimed within a period of six months the director may direct that the ashes be buried in an ash grave.

**GENERAL**

**30. Delegation**

The director may delegate any power or duty conferred on the director in terms of this by-law to an employee of the municipality.

**31. Validation.**

Every permit issued by or on behalf of the council prior to the commencement of this by-law and purporting to authorise the exhumation, disturbance,

removal or re-interment of a body shall be deemed to have been lawfully issued and any act performed or other thing done in consequence of and in accordance with any such permit shall be deemed to have been lawfully performed or done.

### **32. Offences**

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