



**RAYMOND MHLABA LOCAL MUNICIPALITY: CEMETERIES BY-LAW**  
**By-law published in Provincial Gazette number 4184 dated 11 February 2019**  
Under the provisions of section 156(2) of the Constitution of the Republic of South Africa, 1996, the Raymond Mhlaba Local Municipality, enacts as follows:-

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- SCHEDULE

**1. Definitions**

In this by-law, unless inconsistent with the context:-

**“authorised official”** means a person appointed by the Council to be in control of a cemetery;

**“category of persons”** means families, specific religious denominations, or groups of persons with special requirements for interment of human remains;

**“cemetery”** means any place, whether public or private, wherein human remains have been or are intended to be interred and includes a crematorium;

**“certificate of reservation”** means a certificate of proof that a site for a grave, or sites for graves, had been reserved in respect of a person or category of persons;

**“council”** means the council of the raymond Mhlaba Local Municipality;

**“fees”** means the fees determined by the Council in terms of its Tariff By-law, promulgated by the Council in terms of section 75 of the Local Government: Municipal Systems Act, No 32 of 2000, or pending such promulgation, a decision by the Council in terms of section 75A of that Act to levy and recover fees, charges or tariffs;

**“funeral”** has the same meaning as interment and includes a cremation;

**“municipal manager”** means the official appointed by the Council in the capacity of municipal manager in terms of section 82 of the Structures Act, Act 117 of 1998, and

**“interment”** means the burial under the ground or any other means of interment, and includes any other manner of disposal of human remains.

## **2. Purpose**

To regulate the establishment of and control over cemeteries and matters relating to the interment of human remains

## **3. Establishment of cemeteries**

- (1) The Council may establish cemeteries within its municipal area.
- (2) No person may—
  - (a) establish a cemetery within the municipal area without the prior approval of the Council, or
  - (b) knowingly inter or cause to be interred any human remains in a cemetery which has been opened or established without such approval.
- (3) The Council may reserve any area as a cemetery for the interment of the deceased of any person or category of persons; provided that such reservation does not grant the right to any person to be interred in a specific place in a cemetery.
- (4) In the case of a reservation in terms of subsection (4), the authorised official will issue a certificate of reservation in respect of such person or category of persons.

## **4. Taking over of cemeteries by the Council**

- (1) The Council may take over any cemetery within its municipal area.
- (2) In cases where cemeteries that are privately owned are taken over, the taking over of the cemetery concerned is by agreement with the owner of the cemetery.
- (3) Upon the taking over of a cemetery in terms of this section—
  - (a) the ownership of all movable and immovable property and other assets connected with such cemetery will, subject to any trusts or conditions, vest in the municipality;
  - (b) all revenue and other moneys payable to and recoverable in respect of such cemetery will be payable to and recoverable by the Council; and

- (c) all other privileges and rights and all liabilities and obligations in respect of such cemetery will devolve upon the municipality which 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.

(4) The municipality will apply to the Registrar of Deeds for the transfer to and registration in the name of the municipality such property or right.

#### **5. Use of disused cemeteries owned by the Council**

(1) The Council may, notwithstanding any condition of title, use any cemetery or portion thereof which has been closed or disused for for a period of not less than twenty years for such purpose as will not desecrate the ground, any human remains or any gravestones or similar structures in such cemetery or portion.

(2) The Council may, notwithstanding any condition of title, reverently remove to another cemetery the human remains, gravestones and other similar structures in any 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 cemetery shall thereupon cease.

(3) When the Council desires to act in terms of subsection (1) or (2), the municipal manager must -

- (a) publish the Council's intention to do so for public comment in a manner that allows the public an opportunity to make representations in regard to the matter, and
- (b) if any objections are lodged in accordance with the publication contemplated by paragraph (a)—
  - (i) transmit all such objections to the Council together with any apposite comments thereon and a copy of such advertisement, and
  - (ii) obtain the Council's authority to so use or remove, as the case may be.

#### **6. Use of disused cemeteries not owned by the Council**

Closed or disused cemeteries not owned by the Council, will not be dealt with in any manner unless the Council has acted in accordance with the provisions of section 4(3).

#### **7. Authority for interment**

(1) No person may inter or cremate any human remains without the consent of the authorised official.

(2) Consent in terms of subsection (1) will not be granted, unless—

- (a) proof that the interment or cremation is lawful has been submitted to the authorised official;
  - (b) the fees determined by the Council has been paid, and
  - (c) if applicable, a reservation certificate has been submitted to the authorised official.
- (3) The authorised official may, in terms of the provisions of the Council's Tariff By-law, allow the interment or cremation of human remains free of charge.

#### **8. Hours of interment**

Except with the written permission of the authorised official, no person may inter human remains in a cemetery between the hours of sundown and sunup.

#### **9. Register of funerals**

The authorised official will keep a register of funerals and graves in which each interment must be entered immediately after interment.

#### **10. Demarcation of grave sites**

The authorised official will demarcate grave sites according to a plan approved by the municipal manager.

#### **11. General provisions regarding cemeteries**

No person may—

- (a) enter or exit a cemetery except through the gates provided for the purpose;
- (b) without the written permission of the authorised official, carry out any business, display any advertisement or distribute leaflets in a cemetery;
- (c) sit, stand or climb over any grave, gravestone or similar structure, gate, wall, fence or building in a cemetery;
- (d) without the written permission of the authorised official, bring in any animal or animal-drawn vehicle into a cemetery;
- (e) damage, mar, remove or deface, any grave, gravestone, wall, building, plant, fence or other infrastructure in a cemetery; or
- (f) remain in a cemetery after the cemetery has closed for the day in terms of a notice at the entrance or entrances to the cemetery,

#### **12. Removal of gravestones or other structures**

If a gravestone or other structure must be removed for the purposes of a funeral, the holder of the reservation certificate or a duly authorised representative in respect of such site, must remove the necessary items at least eight working hours before the interment must take place.

### **13. Graves to be identified**

In each case where an interment has been authorised by the authorised official, the authorised official must place an identification marker on the gravesite, and no person may inter human remains in any other grave than a grave so indicated by the authorised official.

### **14. Provisions relating to graves**

(1) The measurements to which graves must comply, will be determined by the authorised official in terms of specifications approved by the municipal manager.

(2) In cases where deeper, longer or wider graves are required, application for permission must be made to the authorised official, and an additional fee may be payable.

(3) The authorised official may, on application, at the payment of a fee, and at the discretion of the authorised official, allow the remains of more than one person to be interred in one grave.

(4) No person may –

(a) inter human remains in a grave that does not comply with the measurements specified in terms of sub-section (1);

(b) where deeper, longer or wider graves are required as set out in sub-section (2), without the written permission of the authorised official;

(c) without the written permission of the authorised official allow the remains of more than one person to be interred in one grave.

### **15. Provisions relating to burials**

(1) No one may, without the prior written approval of the authorised official, conduct any religious service according to the customs of any denomination in any area of the cemetery that has been reserved for the use of another denomination.

(2) No one may allow a hearse, while it is in the cemetery, to deviate from the roads, and a hearse must vacate the cemetery as soon as possible after the funeral for which it was used.

(3) Anyone attending a funeral, must comply with the directions of the authorised official in regard to the route that must be followed within the cemetery.

### **16. Provisions relating to gravestones and similar structures**

(1) No one may erect, carry out any work on, or remove any gravestone or similar structure without the prior written approval of the authorised official, and then only in accordance with the conditions and requirements determined by the authorised official.

(2) No one may act in terms of subsection (1) unless the fees have been paid.

(3) The authorised official may refuse to grant approval in terms of subsection (1) if the erection of, work on or epitaph on the gravestone or similar structure may be offensive to users of the cemetery or visitors to the cemetery.

#### **17. Offences and penalties**

A person who contravenes the provisions of section 3(2)(a), 3(2)(b), 7(1), 8, 11(a)-(f), 12, 13, 14(4)(a)-(c), 15(1)-(3) and 16(1)-(2) is guilty of an offence and is liable to a fine as approved by the Chief Magistrate of the District in a fine schedule or to imprisonment for a period not exceeding three years and in addition, the payment of a further amount which, in the opinion of the court, is equal to the expenditure incurred by the municipality as a result of such contravention.

#### **18. Repeal**

The following by-laws and any other provision in any other by-law that is inconsistent with the provisions of this by-law are hereby revoked:

<b>Provincial Notice No.</b>	<b>Title</b>	<b>Extent of repeal</b>
P.G. 1476 dated 20/2/2006	Nxuba Local Municipality: By-law relating to cemeteries and crematoria	The whole
P.G. 1477 dated 20/2/2006	Nkonkobe Local Municipality: By-law relating to cemeteries and crematoria	The whole

#### **19. Short title and commencement**

This by-law is called the Raymond Mhlaba Local Municipality: Cemeteries by-law and comes into operation on the date of publication in the Provincial Gazette. **By-law published in Provincial Gazette number 4184 dated 11 February 2019.07.**

### **RAYMOND MHLABA LOCAL MUNICIPALITY: CEMETERIES BY-LAW: OFFENCES AND FINES**

By-law published in Provincial Gazette number 4184 dated 11 February 2019

<b>Section</b>	<b>Description of offence</b>	<b>Proposed</b>	<b>Approved</b>
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<b>Contravened</b>		<b>Fine (Column (1))</b>	<b>Fine Column (2)</b>
3(2)(a)r/w17	Establishing a cemetery within the municipal area without the prior approval of the Council.	No fine. Must appear.	No fine. Must appear.
3(2)(b) r/w17	Knowingly inter or cause to be interred any human remains in a cemetery which has been opened or established without the prior approval of the Council.	2000	2000
7(1) r/w17	Interring or cremating any human remains without the consent of the authorised official.	2000	2000
8 r/w17	Interring human remains in a cemetery between the hours of sundown and sunup without the written permission of the authorised official.	2000	2000
11(a) r/w17	Enter or exit a cemetery except through the gates provided for the purpose	500	500
11(b) r/w17	Carry out any business, display any advertisement or distribute leaflets in a cemetery without the written permission of the authorised official	500	500
11(c) r/w17	Sit, stand or climb over any grave, gravestone or similar structure, gate, wall, fence or building in a cemetery	500	500
11(d) r/w17	Bring in any animal or animal-drawn vehicle into a cemetery without the written permission of the authorised official	500	500
11(e) r/w17	Damage, mar, remove or deface, any grave, gravestone, wall, building, plant, fence or other infrastructure in a cemetery	1000	1000
11(f) r/w17	Remain in a cemetery after the cemetery has closed for the day in terms of a notice at the entrance or entrances to the cemetery	500	500
12 r/w17	Failure to remove a gravestone or other structure for the purposes of a funeral by the holder of the reservation certificate or a duly authorised representative in respect of such site, at least eight working hours before the interment must take	500	500

	place.		
13 r/w17	Interring human remains in any other grave than a grave so indicated by the authorised official by means of an identification marker on the gravesite	2000	2000
14(4)(a) r/w17	Interring human remains in a grave that does not comply with the measurements specified by the authorised officer	2000	2000
14(4)(b) r/w17	Interring human remains in a grave that is deeper, longer or wider than the prescribed measurements without the written permission of the authorised official	2000	2000
14(4)(c) r/w17	Allowing the remains of more than one person to be interred in one grave without the written permission of the authorised official	2000	2000
15(1) r/w17	Conducting any religious service according to the customs of any denomination in any area of the cemetery that has been reserved for the use of another denomination without the prior written approval of the authorised official	2000	2000
15(2) r/w17	Allow a hearse, while it is in the cemetery, to deviate from the roads, and failing to vacate the cemetery as soon as possible after the funeral for which it was used	500	500
15(3) r/w17	Failing to comply with the directions of the authorised official in regard to the route that must be followed within the cemetery	500	500
16(1) r/w17	Erect, carry out any work on, or remove any gravestone or similar structure without the prior written approval of the authorised official, or failure to comply with the conditions and requirements determined by the authorised official	500	500
16(2) r/w17	Erect, carry out any work on, or remove any gravestone or similar structure without paying the prescribed fees	500	500

Hereby certify that the admission of guilt fines listed in Column 2 above as submitted by the Raymond Mhlaba Local Municipality have been approved by me in terms of Section 57(5)(a) and 341(5) of the Criminal Procedure Act, 51 of 1977, for the Magisterial District of:

**Middledrift , Fort Beaufort , Adelaide , Bedford , Cathcart , Alice , Seymour**

This determination replaces any previous determination for the said Magisterial District.

Signed ..... .....	04/2019
Magistrate: Middledrift	Date Stamp
Signed ..... .....	04/2019
Magistrate: Fort Beaufort	Date Stamp
Signed ..... .....	04/2019
Magistrate: Adelaide	Date Stamp
Signed ..... .....	04/2019
Magistrate: Bedford	Date Stamp
Signed ..... .....	04/2019
Magistrate: Cathcart	Date Stamp
Signed ..... .....	04/2019
Magistrate: Alice	Date Stamp
Signed ..... .....	04/2019
Magistrate: Seymour	Date Stamp