

**DRAFT**

**OVERSTRAND CEMETERY**

**POLICY**



# OVERSTRAND MUNICIPALITY CEMETERY POLICY

## PART I

### DEFINITIONS, ESTABLISHMENT AND CONTROL

#### PURPOSE

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 reinterment of bodies, and to provide for matters incidental thereto.

#### 1. DEFINITIONS

In this policy, words used in the masculine gender include the feminine, the singular includes the plural and vice versa, the Afrikaans text shall prevail in the event of an inconsistency between the different texts, and, unless the context otherwise indicates:—

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

**“body”** shall mean any dead human body, including the body of any stillborn child;

**“burial”** means burial in the earth or some other form of internment and shall include any other mode of disposal of a body;

**“burial order”** means an order issued in terms of the Births and Deaths Registration Act, 1992 (Act 51 of 1992);

**“cemetery”** means any burial place which, as contemplated in section 3, has been duly set apart by the municipality for the burial or disposal of bodies within the municipal area of the Overstrand;

**“coffin”** means any form of opaque outer shell which completely encloses the body and is of sufficient strength to bear the weight of a body without collapsing;

**“double depth plot”** a single plot in which the caskets are buried on top of each other;

**“interment”** means to commit a corpse or ashes to its final resting place;

**“memorial ”** means any tombstone, monument, kerbing, bed and chips, plaque, and inscription on it, or other similar work erected or intended to be erected in any cemetery to commemorate a deceased person;

**“municipal area”** means the area described in Clause 2 of the Establishment Notice published under Provincial Notice 487 dated 22 September 2000;

**“municipality”** means the Municipality of Overstrand established in terms of Section 12 of the Municipal Structures Act, 117 of 1998, Provincial Notice 488 dated 22 September 2000 and includes any political structure, political office bearer, councillor, duly authorised agent thereof or

any employee thereof acting in connection with this by-law by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office bearer, councillor, agent or employee;

“name” includes any identifying description of a deceased human being who possessed no name or whose name is unknown.

## **2. APPLICATION**

This policy shall be applicable in the municipal area of the Overstrand and cemeteries shall be under the control of the Overstrand Municipality.

## **3. ESTABLISHMENT OF PUBLIC CEMETERIES**

3.1 The municipality may set apart any piece of land within its area of jurisdiction for the purposes of a cemetery and is responsible for the general maintenance of such cemetery.

3.2 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

3.3 The municipality may set aside cemeteries or any section thereof for the internment of the dead of any religious denomination or other body or community; provided that such setting aside will not vest in any person the right to be interned in any particular place in any cemetery.

3.4 Notwithstanding the provisions of subsection (3.1), the responsibility for the maintenance of the areas contemplated in subsection (3.3) rests with the group to which exclusive use was granted.

3.5 The municipality may set aside cemeteries or any section thereof to be maintained by the municipality in the form of memorial gardens.

3.6 Passive cemeteries:

- (a) Once a cemetery is full and can no longer be used as an active cemetery, the municipality must declare, through the issuing of a certificate, that cemetery to be a passive cemetery.
- (b) The municipality may declare sections of a cemetery which are full to be closed, pending the use of the remaining sections of the cemetery. Once the entire cemetery is full, the municipality must declare the cemetery to be a passive cemetery in accordance with subsection 3.6 (a).
- (c) The municipality is responsible for the on-going maintenance of all passive cemeteries.

## **PART 2**

### **CEMETERIES**

#### **4. AUTHORITY FOR INTERNMENT**

- 4.1 No person shall inter a body or cause it to be so interred within the municipal area other than in a cemetery.
- 4.2 (a) No body shall be interred in the earth in a cemetery within the municipal area without permission of the municipality.
- (b) Such permission shall not be granted unless a burial order in terms of the Births, Marriages and Deaths Registration Act 1963, has been issued and produced to the officer in charge, and payment of the fees as determined by the municipality have been paid.
- 4.3 The municipality may at its discretion, in such manner as it may deem fit; allow the interment of any body without charge in a cemetery.

#### **5. HOURS OF INTERNMENTS**

- 5.1 Interments shall take place at times determined by the Overstrand Municipality from time to time.
- 5.2 Despite the provisions of subsection (6.1), the Municipality may, if the case is one of emergency or the custom or conventions of a religious or cultural group, permit interment outside the times contemplated in subsection (6.1).

#### **6. REGISTER OF INTERNMENTS**

- 6.1 The municipality shall keep a register of all interments and of graves sites.
- 6.2 Such register shall be completed as far as possible immediately after an interment has taken place.

#### **7. DEMARCATION OF GRAVE PLOTS**

The municipality shall demarcate grave plots in accordance with an approved layout plan.

#### **8. RESERVATION OF GRAVE PLOTS**

No plots shall be reserved except for the reservation of a double depth plot which shall be reserved in the name of the next of kin, or in the name of the person applying for the grave, and payment of fees has been made as determined by the municipality.

#### **9. NOTICE OF INTERNMENT**

- 9.1. Except in urgent cases, the municipality shall be notified of any interment at least two working days before the time set for such interment; provided that for an interment on

a Saturday, Sunday, Monday or public holiday, at least two working days' notice shall be given. If an internment will take place on the day after a public holiday or a weekend, the requirement of two working days' notice shall also apply.

9.2. Every such notice shall be accompanied by the fees determined by the municipality.

9.3. The municipality shall, as soon as possible, issue the necessary certificate for such internment.

## **10. REMOVAL OF MONUMENTS OR STRUCTURES**

If it is necessary to remove a monument or other structure for the purpose of an internment, it shall be removed by the holder of the certificate of reservation in respect of such plot or by his duly authorised representatives not less than two working days before the burial is to take place.

## **11. DIMENSIONS OF GRAVES**

12.1 The excavation for a single grave for a deceased person of the age of twelve years or over shall measure 2160 mm in length and 800mm in width, at ground level.

12.2 The excavation of a double depth grave for a deceased person of the age of twelve years or over shall measure 2160mm in length and 800 mm in width, at ground level.

12.3 The excavation for a single grave for a deceased person under the age of twelve years shall measure 1350 mm in length and 530 mm in width, at ground level.

12.4 The covering soil shall not be less than 1000mm for a single and double depth grave and should two bodies be buried in the same grave, 300mm of soil shall be maintained between the coffins.

12.5. The covering soil shall not be less that 1500mm for a single infill grave.

## **12. GRAVE INFILL SYSTEM**

Due to sandy soil conditions at certain cemeteries a grave infill system has been adopted. Every second plot is used as a double depth grave with a single grave in between.

## **13. PROVISIONS RELATING TO GRAVE PLOTS**

13.1 Where a grave of a greater depth, length or width than that specified is required, application in respect thereof, together with payment of an extra fee (if applicable) shall be made when notice of burial is given.

13.2 All graves shall be prepared by the family under the supervision of the municipality and in conformity with the specifications applicable to ordinary graves.

13.3 The family or the representative of a deceased person will prepare the grave subject to the following conditions

- (a) that an application for approval to prepare such grave be submitted to the municipality at least two working days prior to the burial;
- (b) that the prepared grave be inspected and approved by the responsible municipal official at least eight hours prior to the burial.

13.4. Notwithstanding the provisions of subsection (14.3) if unfavourable soil conditions prevail i.e. sandy soils, the family or representative of the family may request assistance from the Municipality with the preparation of the grave site.

#### **14. INTERMENTS IN DOUBLE DEPTH GRAVES**

In the case of double depth graves, no more than two bodies may be interned in the grave; provided further that the lid of the second coffin placed in the grave under no circumstances be less than 1 000 mm from the surface, that, in the event of the reopening of the grave for the purpose of the interment of the second body, a layer of soil not less than 300 mm thick shall be left undisturbed above the coffin previously placed in the grave and that, if on the reopening of any grave the soil is found to be offensive, the reopening shall not be proceeded with and the grave shall be refilled.

#### **15. PREPARATION OF GRAVES, AND COFFINS**

- 15.1 All graves shall be prepared according to the specifications set out by the municipality and under the supervision of a municipal official.
- 15.2 Bodies shall be placed in coffins for interment except where religious beliefs prohibit its use.
- 15.3 A coffin interred in a grave should insofar as this is possible be constructed of natural wood or other non-toxic, perishable material.

#### **16. PROVISIONS RELATING TO FUNERALS**

- 16.1 No person shall, without prior permission of the municipality, conduct any religious ceremony or service according to the rites of any denomination in any portion of any cemetery which in terms of subsection (3.3) has been set apart by the municipality for the use of any other denomination.
- 16.2 No person shall cause any hearse, while in a cemetery, to leave the roads and every hearse shall leave the cemetery as soon as possible after the funeral for which it was engaged.
- 16.3 Every person taking part in any funeral procession or ceremony shall comply with the directions of the municipality as to the route to be taken within the cemetery.

#### **17. FUNERALS FOR DESTITUTE PEOPLE**

- 17.1 The removal and burial of the corpse of a destitute person who has died within the area of jurisdiction of the Municipality is the responsibility of -
  - (a) the Municipality if -

- (i) the destitute person's corpse has not been claimed by a competent person;  
or
  - (ii) a competent person has undertaken to inter the corpse of the destitute person but has not done so; or
- (b) a State hospital or other institution in terms of the provisions of section 48(2) of the Health Act, 1977 (Act 63 of 1977), if the destitute person died in that State hospital or other institution.

17.2 In terms of section 48(2A)(a) of the Health Act, 1977, the Municipality may, as it deems fit, cremate the corpse of a destitute person instead of internment.

17.3 The corpses of more than one destitute person may, at the discretion of the Municipality or be interred in one grave.

17.4 In the case of the internment of the corpse of a destitute person, the Municipality remains the reservation certificate holder.

17.5 In the case of the cremation of the corpse of a destitute person, the Municipality must inter the ashes in an area specifically set aside for that purpose.

17.6 A person applying for the internment or cremation of the corpse of a destitute person must -

- (a) make an affidavit or have a letter from the relevant ward councillor to the effect that -
  - (i) the applicant cannot afford to pay for the internment or cremation; and
  - (ii) the deceased destitute person left no money or policy to pay for the funeral or cremation; and
- (b) submit the affidavit or signed letter from the relevant ward councillor, which must be to the satisfaction of the Municipality.

17.7 The Municipality reserves the right to refuse to inter or cremate the corpse of a destitute person if the requirements set out in subsection (18.6) are not met.

## **18. PROCEDURES DURING A PANDEMIC**

During a pandemic and a resultant declaration of a National State of Disaster by the government, all regulations with regard to the handling; transportation and final disposal of human remains must be done in accordance to Disaster Management Act and Regulations.

## **19. EXHUMATION OF HUMAN REMAINS**

19.1. Human remains may be exhumed only if -

- (a) the Premier of the Western Cape, the Attorney-General or a magistrate and the reservation certificate holder authorise the exhumation in writing;
- (b) the authorisation contemplated in subsection (a) is handed to the Municipality in advance;

- (c) the family of the deceased person or the funeral director notifies the Municipality not less than three working days in advance of the date and time proposed for the exhumation;
- (d) a nominated Municipal official is present at the exhumation; and
- (e) at least one member of the South African Police Service, who must be notified by the family of the deceased person or the funeral director, is present at the exhumation.

19.2. The Municipality may require that a screen be erected around the area where the exhumation is to take place so that members of the public cannot view the exhumation.

19.3. The Municipality or the Municipality's contractor may open a grave up to the coffin, being the reopening level, but may not remove the remains.

19.4. Only members of the family of a deceased person are permitted at the exhumation of the remains of that deceased person. If members of an organisation wish to attend an exhumation, the organisation must obtain permission from the Municipality in writing at least three working days before the proposed exhumation, failing which the members may be refused access to the exhumation.

19.5. All persons present at an exhumation must obey the instructions of the nominated Municipal official and any member of the South African Police Service.

19.6. If an exhumation takes place to remove a corpse from a grave, the reservation certificate holder retains his or her rights in respect of the grave if the corpse is to be returned to that grave. If the corpse is not to be returned to the same grave, the reservation certificate holder relinquishes his or her rights in respect of that grave, and the grave may be used again as the Municipality deems fit.

## **20. PROVISIONS RELATING TO MEMORIAL STONES OR MONUMENTS**

20.1 No person shall bring or cause to be brought any material into any cemetery for the purpose of carrying out any work in connection with a memorial stone or brickwork or stonework upon any grave, and no person shall erect or place in position any tombstone, kerbing, or monument or any structure whatsoever on any grave, unless and until –

- (a) the grave plot has been reserved in terms of subsection (9) in the name of the person authorising such work;
- (b) a drawing with dimensions and figures thereon showing the position of the proposed work together with a specification of the material to be used, and a copy of any proposed epitaph or ornamentation have been handed to the municipality not less than three working days before it is intended to bring such material into the cemetery;
- (c) all fees, determined by the municipality, which are due in respect of such work shall have been paid;



- (d) the municipality's written approval of the proposed work shall have been given to the holder of the certificate of reservation or his authorised representative.
- 20.2 The municipality may refuse to approve any proposed work with regard to a memorial stone or monument, the plan and specification of which reveals that it will disfigure any cemetery, or which bears any epitaph which may cause offence to users of the cemetery or visitors to it.
- 20.3 No person shall convey any stonework or brickwork or monuments or any portion thereof within any cemetery upon any vehicle or truck which is not fitted with wheels having pneumatic tyres and which is of a kind likely to cause damage to the roads and grounds of such cemetery.
- 20.4 No person engaged in work in connection with any memorial stone or monument shall at any time disturb any adjacent grave plot or, on completion of the work, leave the grave plot before it is in a clean and tidy condition.
- 20.5 All work in connection with a monument which is carried out within any cemetery shall be completed in accordance with the drawing and specification approved in terms of subsection 20.1(b)
- 20.6 Any person carrying out any work in connection with any memorial stones or monuments shall comply with the following provisions – any stones or monuments must be constructed in such a manner so as to be permanently stable and safe.
- 20.7 No person shall, without the municipality's permission, bring any memorial stone or within any cemetery from twelve noon on a Friday until the opening hour on the following Monday.
- 20.8 Any person carrying out work within any cemetery shall in all matters comply with the directions of the municipality.

## **21. MAINTENANCE OF GRAVES**

- 21.1. (a) Any memorial stone or monument erected upon any grave shall at all times be maintained in good order and condition by the holder of the reservation certificate in respect of such grave.
- (b) If any such memorial stone or monument is allowed to fall into a state of disrepair or to constitute a danger or to disfigure the cemetery, the municipality may, by written notice sent by registered post to the holder of the reservation certificate at his last-known postal address, require him to effect such repairs as may be necessary.
- (c) Failure on the part of the holder of the reservation certificate to effect the required repairs within one month of the date of such notice shall be a breach of this by-law and the municipality may have the repairs effected or may have the

memorial stone or monument removed, as it deems fit, and may recover the expense of such repairs or removal from the holder of the reservation certificate.

- 21.2. Any memorial stone or monument dismantled for the purpose of a further burial shall be either re-erected or removed from the cemetery by the holder of the reservation certificate within two months of date of such dismantling.
- 21.3. The municipality shall not be liable for any loss of or damage to any memorial stone, monument or any article placed upon any grave plot which may occur at any time from any cause whatsoever, nor for any compensation in respect of any memorial stone or monument repaired or removed in terms of sections 21.1(c) and 21.2.
- 21.4. No person shall without the prior permission in writing of the municipality plant any tree, shrub, bush or any other plant on any grave plot, nor shall any such tree, shrub, bush or plant be planted upon any portion of such plot other than that indicated by the municipality.
- 21.5. The municipality shall have the right to remove, trim or prune any plant which extends beyond the boundaries of the grave plot upon which it is planted or which is untidy.

## **22. PROVISIONS RELATING TO PERSONS DYING OUTSIDE THE MUNICIPAL AREA**

- 22.1 The provisions of this policy shall apply mutatis mutandis to any internment within the municipal area of the human remains of any person who has died outside such area.
- 22.2 Every application and every document relating to any internment shall be marked with a number which corresponds with the number in the register referred to in subsection 7 and shall be filed in order and kept by the municipality.

## **23. FEES PAYABLE**

All fees payable in respect of burials shall be determined by the municipality.

## **PART 2**

### **MEMORIALS**

## **24. GENERAL REQUIREMENTS FOR MEMORIALS AND MEMORIAL WORK**

- 24.1. The municipality may provide –
  - (a) buildings, niches or other facilities for the deposit and preservation of ashes for definite periods or in perpetuity upon such terms and conditions as may be determined by the municipality;

- (b) facilities for memorial tablets, upon such terms and conditions as may be determined by the municipality.
- 24.2. All inscriptions on niches or memorial tablets of remembrance must comply with general standards of decency and propriety and must not be of such a nature so as to offend the feelings of the public.
- 24.3. A person may only –
- (a) open a niche containing ashes, or
  - (b) remove an urn or casket containing ashes from a niche; with the permission of the municipality, which will not be unreasonably withheld.
- 24.4. If ashes are buried in a grave in a container, such container must be constructed of perishable material.
- 24.5. Only urns or caskets containing ashes may be deposited in a niche.
- 24.6. The municipality or its employees will not be liable to members of the public for any damage to or theft from niches, urns, memorials or any other embellishments under its control or its grounds.

### **PART 3**

### **GENERAL**

#### **25. GENERAL PROVISIONS RELATING TO CEMETERIES**

- 25.1. No person shall –
- (a) enter or leave any cemetery except by the gates and/or doors provided for that purpose, nor shall any person enter any office or enclosed place in any cemetery except on business;
  - (b) carry on any trade or solicit any business, or exhibit, distribute or leave any business card or advertisement, within any cemetery, except on sites specifically determined and set apart for such purposes;
  - (c) sit, stand or climb upon any grave, tombstone, gate, wall, fence or building in any cemetery;
  - (d) bring or cause to be brought any animal into any cemetery without the permission of the municipality;
  - (e) obstruct, resist or oppose the municipality or any employee of the municipality in the course of his duty, or refuse to comply with any order or request which the municipality may give;
  - (f) destroy or do or cause to be done any damage to, or shall mark or draw or erect any advertisement, bill or placard upon, or in any other way deface any grave,

- tombstone, monument, wall, building, fence, railing or other structure or any road in any cemetery;
- (g) disturb the soil, or plant or uproot any plant, shrub or flowering plant, or in any way interfere with any grave or structure in any cemetery.
  - (h) play any game or take part in any sport or fire any firearm, except as a salute in a military funeral, or discharge any airgun or catapult, or disturb or interfere with any person in any cemetery;
  - (i) use any part of a cemetery, or any road or footpath therein for hawking or conducting of any other business without the written consent of the municipality;
  - (j) leave or deposit any rubbish, loose soil, stone or other debris within a cemetery other than at a place provided for that purpose;
  - (k) overnight in, trespass on or enter and remain in any cemetery unless for the purposes of a burial or visiting a grave in such cemetery;
  - (l) use a cemetery or any road or footpath therein, for the conveyance of goods, parcels or other materials or as a thoroughfare or short cut;
  - (m) play or perform any music in a cemetery without the permission of the municipality;
  - (n) hold or take part in any demonstration for any purpose in a cemetery without the prior consent of the municipality;
  - (o) enter and drive in a cemetery with a vehicle except in accordance with the terms and conditions determined by the municipality;
  - (p) bring intoxicating liquor or any dependence-producing substance into a cemetery, or be in possession of such liquor or dependence-producing substance in a cemetery, without the consent of the municipality;
  - (q) expose or convey a body in an unseemly manner in a cemetery;
  - (r) pick or in any way interfere with plants, shrubs, flowers or trees in a cemetery;
  - (s) plant a tree or shrub on a grave or plot or in any other place in a cemetery without the permission of the municipality, and for these purposes, the municipality shall be entitled to prune, cut down or remove any shrub, plant, flower or tree in a cemetery and the municipality shall not be liable to any person who may suffer damages as a result of such pruning or removal;
  - (t) disturb or annoy any person lawfully present in a cemetery;

25.2. The driver of a vehicle within a cemetery passing in close proximity to any point where a funeral service is being conducted must pay the necessary respect by driving in an orderly