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**CEMETERIES ACT 1986
LOCAL GOVERNMENT ACT 1995**

SHIRE OF MUNDARING

CEMETERIES LOCAL LAW 2003 (AMENDED)

Under the powers conferred by the *Cemeteries Act 1986* and the *Local Government Act 1995* and under all other powers enabling it, the local government of the Shire of Mundaring resolved on 26 November 2013 to make the following local law.

1. Citation

This Local Law may be cited as the Shire of Mundaring Cemeteries Amendment Local Law 2013.

2. Commencement

This local law comes into operation 14 days after the date of its publication in the *Government Gazette*.

3. Principal local law

In this local law, the *Shire of Mundaring Cemeteries Local Law 2003* published in the *Government Gazette* on 16 June 2004 is referred to as the principal local law. The principal local law is amended.

PART 1 - PRELIMINARY

1.2 Application

This local law applies to the following public cemeteries in the district:

- (a) Wooroloo Public Cemetery located on Reserve No. 9954; and
- (b) Mundaring Public Cemetery located on Reserve No. 10083.

1.3 Interpretation

In this Local Law unless the context otherwise requires:

“**Act**” means the *Cemeteries Act 1986*;

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“animal” means any animal

“ashes” means so much of the remains of a dead body after the due processes of cremation as may be contained in a standard sized cremation urn;

“authorised officer” means an employee of the local government authorised by the local government for the purposes of performing any function or exercising any power conferred upon an authorised officer by this Local Law;

“Board” for the purpose of the Act means the local government;

“burial” has the same meaning as is given to it in the Act;

“cemetery” means any one of or any part of the public cemeteries in the district of the local government, which the Governor, by order, has placed under the care, control and management of the Board;

“CEO” means the chief executive officer for the time being, of the local government;

“Commissioner of Police” means a person for the time being appointed as such under the Police Act 1892 and includes a person for the time being acting in that capacity in the absence of the Commissioner of Police;

“dead body” has the same meaning as is given to it in the Act;

“district” means the district of the local government;

“funeral” includes the burial of a dead body and all associated processions and ceremonials, but does not include so much of the ceremonial that is solely a religious rite;

“Funeral Director” means a person holding a current funeral director’s licence;

“Grant of Right of Burial” means permission given by the local government for the right to use a specified area of a cemetery for burial.

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“grave” means a specified area of the cemetery for burial;

“guide dog” has the same meaning as is given to that expression in the *Dog Act 1976*;

“holder” in relation to a grant includes –

- (a) a person issued with a grant by the Board;
- (b) a person for the time being appearing to the Board to be the holder of a grant.

“local government” means the Shire of Mundaring;

“memorial” means a memorial plaque or memorial as described in this local law or as otherwise approved by the local government;

“Minister” means the Minister for Local Government;

“monumental mason” means a person holding a current monumental mason’s licence;

“personal representative” means the administrator or executor of an estate of a deceased person;

“set fee” refers to fees and charges set by a resolution of the local government and published in the Government Gazette, under section 53 of the Act;

“single funeral permit” means a permit issued by the local government under section 20 or 21 of the Act which entitles the holder to conduct at the cemetery a funeral of a person named in the permit.

1.4 Repeal

The following Local Laws are repealed:-

- (a) Local Laws Relating to the Management of the Woorloo Public Cemetery, published in the *Government Gazette* on 2 January 1920, as amended; and

- (b) Local Laws Relating to the Management of the Mundaring Public Cemetery, published in the *Government Gazette* on 2 January 1941, as amended.

PART 2 - ADMINISTRATION

2.1 Powers and functions of CEO

Subject to any directions given by the local government, the CEO shall exercise all the powers and functions of the local government in respect of the cemetery.

PART 3 - APPLICATION FOR FUNERALS

3.1 Application for burial

- (1) A person may apply for a Grant of Right of Burial in the cemetery in the form determined by the local government from time to time.
- (2) An application under subsection (1) is to be accompanied by the set fee.

3.2 Applications to be accompanied by certificates etc

All applications referred to in section 3.1 shall be accompanied by either a medical certificate of death or a Coroner's order of burial, and a certificate issued under section 3.3, in respect of the body.

3.3 Certificate of identification

- (1) After a dead body is placed in a coffin and prior to a dead body being removed to the cemetery, a person who personally knew the deceased shall identify the dead body and shall complete a certificate of identification in the form determined by the local government from time to time, unless:
 - (a) in the opinion of the Funeral Director, the dead body is not in a fit state to be viewed; or
 - (b) after reasonable effort the Funeral Director is unable to arrange for a person to identify the dead body.

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(2) Where:

- (a) in the opinion of the Funeral Director, the dead body is not in a fit state to be viewed; or

- (b) after reasonable effort the Funeral Director is unable to arrange for a person to identify the dead body, then the Funeral Director shall complete a certificate in the form determined by the local government from time to time.

3.4 Minimum notice required

All bookings to hold a funeral shall be made with the local government at least twenty four hours prior to the time proposed for burial on the application, otherwise an extra charge may be made.

PART 4 - FUNERAL DIRECTORS

4.1 Funeral Director's licence expiry

A funeral director's licence shall expire on the 30th day of June in each year.

4.2 Single funeral permits

Every application for a single funeral permit made under section 20 or 21 of the Act shall include coffin specifications and details of the vehicle transporting the dead body to the gravesite.

4.3 Application refusal

The local government may refuse an application for a single funeral permit if, in the opinion of the local government, either the coffin specifications or the details of the vehicle transporting the dead body to the gravesite, are not structurally sound or are otherwise inadequate or inappropriate, or on any other grounds.

PART 5 - FUNERALS

Division 1 - General

5.1 Requirements for funerals and coffins

A person shall not bring a dead body into the cemetery unless:

- (a) the local government has approved an application for a Grant of Right of Burial for that body in accordance with Part 3 of this Local Law;
- (b) it is enclosed in a coffin which in the opinion of the local government is structurally sound and bears the name of the deceased person indelibly inscribed in legible characters on a plate on the coffin's lid; and
- (c) under the plate referred to in paragraph (b) there is a substantive lead strip bearing the surname of the deceased person stamped in legible characters, each character being not less than 10 mm in height.

5.2 Funeral processions

The time fixed by the local government for any burial shall be the time at which the funeral procession is to arrive at the cemetery gates, and, if not punctually observed, then the applicant who applied to hold the funeral under section 3.1 shall pay the set fee for being late.

5.3 Vehicle access and speed limitations

- (1) Subject to section 5.3(2), every funeral procession shall enter by the principal entrance, and no vehicle except the hearse, and official mourning coaches, shall be permitted to enter the cemetery.
- (2) This section shall not apply to persons using wheelchairs or motorised wheelchairs.
- (3) **At all times vehicles shall proceed within the cemetery by the constructed roadway or other areas designated for the use of vehicles and shall not exceed the speed indicated by signs.**

5.4 Conduct of funeral by local government

When conducting a funeral under section 22 of the Act the local government may:

- a) require a written request for it to conduct a funeral to be lodged with it;
- b) in its absolute discretion, charge any person requesting it to conduct a funeral the set fee for the conduct of that funeral by it;

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- c) where no fee or a reduced fee has been charged by it for the conduct of the funeral, determine the manner in which the funeral shall be conducted;
- d) bury the dead body within a cemetery under delegation of the local government and in accordance with the Act;
- e) specify an area in the cemetery where the dead body is to be buried or the ashes placed;
- f) conduct the funeral notwithstanding the failure of a person to make any application or to obtain any consent required under this Local Law;
- g) do or require anything which it considers is necessary or convenient for the conduct of a funeral by it.

Division 2 - Placement of ashes

5.5 Disposal of ashes

- (1) The personal representative of a deceased person whose body has been cremated may apply, in an application under section 3.1 or otherwise, for permission to dispose of the ashes in the cemetery and upon payment of the set fee the local government may grant permission for the ashes to be disposed of by one of the following methods:
 - Niche Wall
 - Memorial Garden
 - Family Grave
 - Scattering to the Winds
 - Other memorials approved by the local government.
- (2) Subject to sub-sections (3) and (4), a person shall not place the ashes of a deceased person in the cemetery.
- (3) An authorised officer may place the ashes of a deceased person in a cemetery in accordance with the local government approval provided:
 - (a) the person requesting the placement of the ashes has the permission of the local government; and
 - (b) the ashes are placed within an area set aside for that purpose by the local government.

- (4) An authorised officer may place the ashes of a deceased person within a grave in accordance with the local government approval, provided the person requesting the placement of the ashes has the written permission of the local government and the approval of the holder of the right of burial of the grave.

PART 6 - BURIALS

6.1 Depth of graves

- (1) A person shall bury a coffin within the cemetery so that the distance between the top of the coffin and the original surface of the ground is –
 - (a) not less than 750mm, unless that person has the permission of an authorised officer; or
 - (b) in any circumstances not less than 600mm.
- (2) The permission of an authorised officer in subclause (1)(a) will only be granted where in the opinion of the authorised officer exceptional circumstances require granting of that permission.

6.2 Re-opening a grave

- (1) Subject to subclause (2), if for the purpose of re-opening a grave in the cemetery the local government finds it necessary to remove a monument, edging, tiles, plants, grass, shrubs or other like material from the grave, then the person ordering the re-opening of that grave shall bear the cost of the removal and any necessary reinstatement.
- (2) If the Minister orders the exhumation of a body in accordance with section 58 of the Act, then the Minister may further order how and by whom the cost referred to in subclause (1) shall be met.

6.3 Exhumation of a coffin

- (1) Subject to subclause (2) a person shall not exhume a coffin in the cemetery for the purposes of re-burial within 12 months after the date of its interment.

- (2) Subclause (1) shall not apply where the exhumation is ordered or authorised pursuant to the Act.
- (3) Subject to subclause (1) and (2) prior to any exhumation, the holder of a grant must have applied in writing to the local government requesting the exhumation and the local government must have authorised the exhumation.

6.4 Opening a coffin

A person shall not open a coffin in a cemetery unless –

- (a) the coffin is opened for the purposes of the exhumation of a dead body;
or
- (b) that person has produced to the local government an order signed by the Commissioner of Police and the local government has approved the opening of that coffin.

PART 7 - MEMORIALS AND OTHER WORK

Division 1 - General

7.1 Application for monumental work

A local government may require the written consent of the holder of the right of burial of the grave to accompany an application under section 30 of the Act.

7.2 Placement of monumental work

Every memorial shall be placed on proper and substantial foundations **as determined by the local government**.

7.3 Removal of rubbish

All refuse, rubbish or surplus material remaining after memorial works are completed under a permit issued under section 30 of the Act shall be immediately removed from the cemetery by the person carrying out the same.

7.4 Operation of work

All material required in the erection and completion of any work shall, as far as possible, be prepared before being taken to the cemetery, and all materials required by tradesmen shall be admitted at such entrance as the CEO or an authorised officer shall direct.

7.5 Removal of sand, soil or loam

No sand, earth or other material shall be taken from any part of the cemetery for use in the erection of any memorial or work except with the written approval of the local government.

7.6 Hours of work

Persons shall not be permitted to carry out memorial or other work on graves within the cemetery other than during the hours of 8:00 am and 6:00 pm on weekdays, and 8:00 am and noon on Saturdays, without the written permission of the local government.

7.7 Unfinished work

Should any work by masons or others be not completed before 6:00 pm on weekdays and noon on Saturdays, they shall be required to leave the work in a neat and safe condition to the satisfaction of the CEO or an authorised officer.

7.8 Use of wood

No wooden fence, railing, cross or other wooden erection shall be allowed on or around any grave, other than as a temporary marker and with the prior approval of the local government.

7.9 Plants and trees

No trees or shrubs shall be planted on any grave or within the cemetery except such as shall be approved by the CEO.

7.10 Supervision

All workers, whether employed by the local government or by any other person, shall at all times whilst within the boundaries of the cemetery be

subject to the supervision of the CEO or an authorised officer and shall obey such directions as the CEO or an authorised officer may give.

7.11 Australian War Graves

Notwithstanding anything in this Local Law to the contrary, the Office of Australian War Graves:

- (a) may place a memorial on a military grave; and
- (b) is not required to pay the set fee for any memorial that is placed upon a military grave.

7.12 Placing of glass domes, vases or other ornaments

A person shall not place glass domes, vases or other ornaments -

- (a) Outside the perimeter of a grave in the cemetery as defined in the plans kept and maintained under section 40(2) of the Act; or
- (b) On an area set aside by the local government as a memorial plaque section.

7.13 Minor maintenance and repair works

Persons shall be permitted to carry out minor maintenance and repair works, not of a structural nature, such as cleaning and touch up painting on graves, without seeking the approval of the local government.

Division 2 - Licensing of monumental masons

7.14 Monumental mason's licence

- (1) The local government may upon receipt of an application in writing by any person and upon payment of the set fee issue to the applicant a monumental mason's licence.
- (2) A licence issued under sub-section (1) authorises the holder to carry out monumental works within the cemetery subject to the provisions of this Local Law and such conditions as the local government shall specify upon the issue of that licence.

7.15 Expiry date, non-transferability

A monumental mason's licence:

- (a) shall, subject to section 7.18, be valid from the date specified therein until the 30th day of June next following; and
- (b) is not transferable.

7.16 Carrying out monumental work

A person shall not carry out monumental work within the cemetery unless that person:

- (a) is the holder of a current monumental mason's licence issued pursuant to section 7.14 or does so as the employee of a person who holds such a licence; or
- (b) is authorised by the local government to do so.

7.17 Responsibilities of the holder of a monumental mason's licence

The holder of a monumental mason's licence shall be responsible for the compliance by every person purporting to be authorised to carry out monumental works within the cemetery pursuant to that licence with all the requirements and conditions of the licence, this Local Law, the Act and any other written law which may affect the carrying out of monumental works.

7.18 Cancellation of a monumental mason's licence

- (1) The local government may by notice in writing to the holder of a monumental mason's licence terminate the licence on any of the following grounds:
 - (a) that the holder of the licence has committed a breach of the requirements and conditions of the licence, this Local Law, the Act or any other written law which may affect the carrying out of monumental works;
 - (b) that, in the opinion of the local government, the conduct of the holder of the licence or any person in the employ of that holder in

carrying out or attempting to carry out any works within the cemetery, is inappropriate or unbecoming; or

- (c) that the holder of the licence has purported to transfer the licence issued to that holder.
- (2) Upon the termination of a monumental mason's licence under this section no part of any fee paid for the issue of that licence is refundable by the local government.

PART 8 – GENERAL

8.1 Vandalism, damaging and removing of objects

Subject to section 8.2, a person shall not –

- (a) break or cause to be broken any glass, ceramic or other material in or upon the cemetery;
- (b) damage, remove or pick any tree, plant, shrub or flower in the cemetery or any other object or thing on any grave or memorial or which is the property of the local government without the permission of the local government.

8.2 Withered flowers

A person may remove withered flowers from a grave or memorial and these are to be placed in a receptacle provided by the local government for that purpose.

8.3 Advertising

A person shall not carry on or advertise any trade, business or profession within the cemetery without the prior written approval of the local government which consent may be granted subject to such conditions as the local government thinks fit.

8.4 Obeying signs and directions

A person shall obey all signs displayed, marked, placed or erected by the local government within the cemetery and any other lawful direction by the CEO or an authorised officer.

8.5 Removal from the cemetery

Any person failing to comply with any provisions of this Local Law or behaving in a manner that in the opinion of the Local government, the CEO or an authorised officer is inappropriate in the cemetery may in addition to any penalty provided by this Local Law be ordered to leave the cemetery by the local government, the CEO or an authorised officer.

8.6 Animals, assistance animals and guide dogs

Subject to section 8 of the *Dog Act 1976*, section 66J of the *Equal Opportunity Act 1984* and section 9(2) of the *Disability Discrimination Act 1992* (Cth) a person shall not bring an animal into or permit an animal to enter or remain in the cemetery, other than with the approval of the CEO or an authorised officer.

PART 9 - OFFENCES AND MODIFIED PENALTIES

9.1 General

A person who commits a breach of any provisions of this Local Law commits an offence and shall on conviction be liable to a penalty not exceeding **\$500** and if the offence is a continuing one to a further penalty not exceeding **\$20** for every day or part of a day during which the offence has continued.

9.2 Modified penalties

- (1) The offences specified in **Schedule 1** are offences which may be dealt with under section 63 of the Act.
- (2) The modified penalty payable in respect of an offence specified in Schedule 1 is set out in the fourth column of **Schedule 1**.
- (3) The prescribed form of the infringement notice referred to in section 63(1) of the Act is set out in **Schedule 2**.

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- (4) The prescribed form of the notice withdrawing an infringement notice referred to in section 63(3) of the Act is set out in **Schedule 3**.

Schedule 1 – Offences and modified penalties
(Clause 9.2)

Item No.	Clause	Nature of offence	Modified penalty
1	5.3	Failure to drive vehicle on constructed roadway or other areas designated for the use of vehicles	\$100
2	5.3	Exceeding speed limit	\$100
3	7.3	Failure to remove rubbish and surplus materials	\$100
4	7.7	Leaving uncompleted works in an untidy or unsafe condition	\$100
5	8.1	Vandalism, damaging and removing of objects	\$250
6	8.3	Unauthorised advertising or trading	\$100
7	8.4	Disobeying sign or lawful direction	\$100
8	8.6	Bringing an animal into or permitting an animal to enter or remain in a cemetery without approval	\$100
9		All other offences not specified	\$100

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Schedule 2 – Infringement notice
(Clause 9.2)

TO:

(Name)

(Address)

It is alleged that at _____: _____ hours on _____ day
of _____ 20____ at

you committed the offence indicated below by an (x) in breach of clause
_____ of the Shire of Mundaring Cemeteries Local Law 2003.

(Authorised Officer)

Offence

- Unauthorised vehicle use (cl 5.3)
- Exceeding speed limit in vehicle (cl 5.3)
- Failure to remove rubbish and surplus materials (cl 7.3)
- Leaving uncompleted works in an untidy or unsafe condition (cl 7.7)
- Vandalism, damaging and removing of objects (cl 8.1)
- Unauthorised advertising or trading (cl 8.3)
- Disobeying sign or lawful direction (cl 8.4)
- Animal at large (cl 8.6)
- Other offence

\$ _____

You may dispose of this matter –

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By payment of the penalty as shown, within 21 days of the date of this notice (or the date of the giving of this notice if that is a different date), to the Chief Executive Officer of the Shire of Mundaring at 7000 Great Eastern Highway, Mundaring, between the hours of 9:00 am to 4:30 pm Monday to Friday.

Please make cheques payable to –

The Chief Executive Officer
Shire of Mundaring
7000 Great Eastern Highway
MUNDARING WA 6073

If the penalty is not paid within the time specified, then a complaint of the alleged offence may be made and heard and determined by a court.

Schedule 3 – Withdrawal of infringement notice
(Clause 9.2)

No. _____

____ / ____ / ____

Date:

To (1)

Infringement notice no. _____ dated ____ / ____ / ____ for the alleged offence of (2)

Penalty (3) \$ _____ is withdrawn.

(Delete whichever does not apply)

- * No further action will be taken
- * It is proposed to institute court proceedings for the alleged offence.

- (1) Insert name and address of alleged offender
- (2) Insert short particulars of offence alleged
- (3) Insert amount of penalty prescribed

