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OF SOUTH WEST AFRICA.

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OFFISIËLE KOERANT



JITGAWE OP GESAG.

VAN SUIDWES-AFRIKA.

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Government Notice.

Goewermentskennisgewing.

The following Government Notice is published for general information.

Die volgende Goewermentskennisgewing word vir algemene inligting gepubliseer.

J. J. KLOPPER,
Secretary for South West Africa.

J. J. KLOPPER,
Sekretaris van Suidwes-Afrika.

Administrator's Office.
Windhoek.

Kantoor van die Administrateur,
Windhoek.

No. 70.] [24 June 1971

No. 70.] [24 Junie 1971

ORDINANCE, 1971: PROMULGATION OF

ORDONNANSIE, 1971: UITVAARDIGING VAN

The Administrator has been pleased to assent, in terms of section 27 of the South West Africa Constitution Act, 1968 (Act 39 of 1968) to the following Ordinance which is hereby published for general information in terms of section 29 of the said Act:—

Dit behaag die Administrateur om sy goedkeuring te heg, ooreenkomstig artikel 27 van die Wet op die Konstitusie van Suidwes-Afrika 1968 (Wet 39 van 1968) aan die volgende Ordonnansie wat hierby vir algemene inligting gepubliseer word ooreenkomstig artikel 29 van gemelde Wet.

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ORDINANCE

To provide for the establishment, maintenance, management, use and control of crematoria and for matters incidental thereto.

(Assented to 21 June, 1971)

(Afrikaans text signed by the Administrator)

BE IT ORDAINED by the Legislative Assembly for the Territory of South West Africa, as follows:—

Definitions.

1. In this Ordinance, unless the context otherwise indicates —

- (i) "cremate" means to reduce any human remains to **ashes by burning or the application of heat, and** "cremation" has a corresponding meaning; (vi)
- (ii) "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, the Administrator may approve as a crematorium; (iii)
- (iii) "inspector" means an inspector appointed in terms of section 7 of this Ordinance; (ii)
- (iv) "local authority" means the council of any municipality or any village management board and includes the Peri-Urban Development Board established in terms of the provisions of the Peri-Urban Development Board Ordinance, 1970, (Ordinance 19 of 1970); (iv)
- (v) "proprietor" in relation to a crematorium, means any local authority or any person or any society or other association of persons, whether incorporated or not, responsible for the maintenance, management and control of a crematorium; (i)
- (vi) "regulation" means a regulation made and in force under this Ordinance. (v)

Authority of Administrator to approve establishment of a crematorium.

2. (1) The Administrator may, subject to such conditions as he may deem expedient, grant to any local authority or any person or any society or other association of persons, **whether incorporated or not, approval to establish and maintain a crematorium and to regulate the management, control and use thereof, including the authority to levy charges for the use of such crematorium.**

(2) **The approval granted in terms of subsection (1) shall not be effective until the provisions of this Ordinance, the regulations and any condition imposed by the Administrator have been complied with.**

Conditions for the establishment of a crematorium and the registration thereof.

3. (1) Notwithstanding anything contained in any other law, no crematorium shall be established unless the site, plans and specifications thereof have been approved by the Administrator.

(2) Notwithstanding anything contained in any other law, no cremation shall be performed in any crematorium unless the Administrator has granted to the proprietor thereof a certificate of registration in respect of such crematorium, and that certificate shall only be granted if the Administrator is satisfied that such crematorium, has been established in accordance with the requirements of subsection (1) and that the crematorium is properly equipped for the purpose which it is intended to serve.

(3) No approval in terms of subsection (1) shall be granted unless the local authority or person or society or other association of persons applying for that approval, has been granted such approval as contemplated in section 2 (1).

Site of
crematorium.

4. No crematorium may be established within two hundred metres of the boundary of any land belonging to any other person, without the consent in writing of the owner and occupier of such land, unless the Administrator has granted authority to dispense with the consent of any or all such owners and occupiers, or within fifty metres of any public road, street, thoroughfare or public place: Provided that the foregoing provision shall not apply to the establishment of a crematorium in any cemetery under the management and control of a local authority.

Inspection
before
granting of
certificate of
registration.

5. Before granting a certificate of registration in terms of section 3 (2) the Administrator may require that the crematorium concerned and the equipment and appliances to be used in connection therewith be inspected by an inspector or by any officer or person whom the Administrator may appoint for that purpose.

Cremation to be
performed in
registered
crematorium
only.

6. After the commencement of this Ordinance, no person shall perform, or permit or take part in the performance of, a cremation in any place other than a crematorium in respect of which a certificate of registration has been granted in terms of section 3 (2).

Appointment of
Inspectors.

7. The Administrator may appoint one or more persons as an inspector or inspectors for the purposes of enforcing this Ordinance and the regulations, and every inspector so appointed, shall be furnished with a certificate, signed by the Secretary for South West Africa, that he has been so appointed.

Powers of
Inspectors.

8. (1) Any inspector may enter any crematorium in respect of which a certificate of registration has been granted in terms of section 3 (2) and inspect such crematorium in order to ascertain whether it is being maintained, managed and used in a proper, decent and orderly manner and whether the provisions of this Ordinance and the regulations are being observed and complied with.

(2) Such power of inspection shall include the right to inspect any register or record which the proprietor of a crematorium is required to keep in terms of any regulation and such register or record shall, without delay, be made available to any inspector at his request.

(3) Any inspector may call upon the proprietor or **any employee of such proprietor, to furnish such information** as he may reasonably require in connection with any inspection contemplated in terms of subsection (1).

(4) Any inspector may enter upon any land or enter any building or any crematorium in respect of which no certificate of registration has been granted in terms of section 3 (2) for the purpose of carrying out an inspection thereof, including the inspection of any book or document, if he has reasonable grounds for believing that any cremation is being performed on such land or in such building or crematorium and he may make such enquiries of any person found on such land or in such building or crematorium or who has any connection therewith, as he may deem expedient, for the purpose of ascertaining whether the provisions of this Ordinance and the regulations are being observed and complied with.

(5) Any inspector exercising any power conferred upon him in terms of this Ordinance or the regulations, shall, on demand, produce the certificate issued to him in terms of section 7.

Closing
of a
crematorium.

9. (1) If an inspector, after inspection of a crematorium by him, certifies that such crematorium is defectively or inadequately constructed or equipped, or is in a state of disrepair or constitutes a nuisance within the **meaning of the Public Health Act, 1919, (Act 36 of 1919)**, as applied to the Territory of South West Africa by the Public Health Proclamation, 1920 (Proclamation 36 of 1920), the Administrator may issue a closing order, requiring that such crematorium or a part thereof be closed and remain closed permanently or until any instruction given by the Administrator to remedy such defect, inadequacy or disrepair or to abate such nuisance, has been complied with to his satisfaction.

(2) If the proprietor of a crematorium contravenes or fails to comply with any provision of this Ordinance or the regulations or if the Administrator is not satisfied that such crematorium is being maintained, managed, controlled or used in a fit, decent and proper manner, the Administrator may issue a closing order requiring that such crematorium be closed and remain closed permanently or for such period as the Administrator may deem fit.

(3) If a closing order in terms of subsection (1) or **(2) has been issued in respect of a crematorium or a part thereof**, no person shall perform or permit or take part in the performance of, a cremation in such crematorium or part thereof, as the case may be, unless the reopening thereof has been approved by the Administrator.

Regulations.

10. (1) Subject to the provisions of the Births, Marriages and Deaths Registration Act, 1963 (Act 81 of 1963), the Administrator may make regulations not inconsistent with the provisions of this Ordinance —

- (a) in respect of the construction and establishment **of a crematorium and any equipment and appliance** to be used in connection therewith;
- (b) in respect of an application for a certificate of registration in respect of a crematorium as required in terms of section 3, any information or document to be furnished together with such application and in connection therewith and any condition subject to which such certificate shall be granted;
- (c) requiring any person to advertise in a newspaper his intention to establish a crematorium, if the Administrator deems it expedient, and prescribing the form in which and the times at which such **intention shall be advertised**;
- (d) in respect of the appointment, qualifications, duties and powers of a medical referee and a deputy medical referee for a crematorium, including a regulation requiring the prior approval of the Administrator for every such appointment;
- (e) prescribing the conditions subject to which a **cremation shall be performed**;
- (f) prescribing the form of an application for cremation and of any notice, certificate and declaration to be given or made before a cremation may be performed;
- (g) requiring that the approval of the Administrator, subject to such conditions as he may impose, be obtained for the cremation of a deceased who has **been buried for not less than one year**;

- (h) prescribing the powers and duties of an inspector;
- (j) in respect of the management, control, use and maintenance of a crematorium;
- (k) in respect of the disposal and interment of the ashes of human remains;
- (l) in respect of the keeping and preservation of adequate registers and records of all cremations and of the identification of the ashes of human remains, including the manner in which such registers and records shall be kept and preserved; and
- (m) **generally making provision for all matters which the Administrator may consider necessary or advisable to be prescribed in order to give full effect to the provisions of this Ordinance and to achieve the objects and purposes of this Ordinance.**

(2) The Administrator may, by notice in the *Official Gazette* suspend, in respect of such area and for such period as he may determine in that notice, the operation of any regulation, or he may declare such regulation to be inoperative in respect of the area and for the period so determined, or substitute for such suspended or inoperative regulation any other provision.

(3) Any by-law or regulation, relating to crematoria, made by a local authority in terms of any other law shall only be of force and effect in so far as such by-law or regulation is not in conflict with or repugnant to the provisions of this Ordinance or the regulations.

Offences and penalties.

11. Any person who —

- (a) contravenes or fails to comply with any provision of this Ordinance or the regulations or contravenes or fails to comply with any condition imposed by the Administrator in terms of this Ordinance or the regulations; or
- (b) wilfully obstructs, resists or hinders any inspector in the exercise of his powers or performance of his duties or refuses or fails to comply to the best of his ability with any lawful instruction or request given or put by such inspector; or
- (c) for the purpose of procuring a cremation, wilfully makes a false declaration or representation or issues a false certificate; or
- (d) **makes a statement to an inspector which is false in any material particular, knowing the same to be false; or**
- (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, shall be guilty of an offence and shall be liable —**
 - (i) **on conviction of an offence mentioned in paragraph (a) or (b), to a fine not exceeding two hundred rand or to imprisonment for a period not exceeding six months; or**

- (ii) on conviction of an offence mentioned in paragraph (c) or (d), to a fine not exceeding eight hundred rand or to imprisonment for a period not exceeding two years; or
- (iii) on conviction of an offence mentioned in paragraph (e), to a fine not exceeding two thousand rand or to imprisonment for a period not exceeding five years.

Enquiries as to the carrying out of the provisions of the Ordinance and the regulations.

12. The Administrator may authorize any person to make such enquiries as the Administrator deems expedient for the purpose of ascertaining whether the provisions of this Ordinance and the regulations are being complied with.

Power to prohibit or delay cremation.

13. Nothing contained in this Ordinance or the regulations shall prevent any person entrusted with the investigation of crime on behalf of the State, from prohibiting or delaying any cremation in the execution of his duties for which purpose he may suspend any certificate or other authority authorizing the performance of a cremation, pending any such investigation as he may deem necessary.

Short Title.

14. This Ordinance shall be called the Crematorium Ordinance, 1971.