



**EMALAHLENI LOCAL MUNICIPALITY
INDIGENT AND PAUPER BURIAL
POLICY**

DRAFT

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DEFINITIONS

In this policy, any word or expression to which a meaning has been assigned in the Emalahleni Local Municipality Cemetery and Crematoria By-laws shall bear the same meaning unless the context otherwise indicates –

Applicant means any person, non-governmental organisation (NGO), welfare Organisation or any other entity who seeks assistance to bury or cremate a Deceased person who qualifies for a destitute person's burial or cremation;

Authorised official means an employee of the municipality responsible for carrying out any duty or function or exercising any power in terms of this Policy and includes employees delegated to carry out or exercise such duties, functions or powers;

Burial means when burial or inhumation into earth or any other form of burial and includes a tomb and any other mode of disposal of a body;

Constitution means the Constitution of the Republic of South Africa, 1996;

Council means

- a) The Emalahleni Local Municipality established by section 12 of the Municipal Structures Act, 1998 (Act no. 117 of 1998), exercising its legislative authority through its municipal Council; or
- b) Its succession in title; or
- c) A structure or person exercising a delegated power or carrying out an instruction, where any powers has been delegated or sub-delegated in terms of the ELM Cemetery and Crematoria By-laws, or an instruction given, as contemplated in section 59 of the Local Government: Municipal Systems Act, 2000 (Act no. 32 of 2000); or
- d) A service provider fulfilling a responsibility in accordance with ELM Cemetery and Crematoria By-laws , assigned to it in terms of section 81(2) of the Local Government: Municipal Systems Act, 2000 (Act no. 32 of 2000), or any other law as the case may be;

Cremation means the process of disposing of a human body or any remaining part of a human body by burning it and reducing it to ashes;

Designated service provider means a company which has been awarded the tender to provide the service of burying or cremating destitute persons on behalf of the municipality;

Environmental Health Practitioner means a person registered as such in terms of Section 34 of the Health Professional Act, 1974 (Act no. 56 of 1974) and who performs functions as listed in the Schedule of the Scope of Profession of Environmental Health, as amended;

Grave includes any place, whether wholly or partly above or below ground level in which a corpse is permanently interred or intended to be permanently interred, whether in a coffin or other receptacle or not, and also includes any monument, tombstone, cross, inscription, rail, fence, chain, erection or other structure of whatsoever nature forming part of or belonging to such grave;

Health Act means the National Health Act, 2003 (Act 61 of 2003);

Indigent person means a person who makes use of the cemetery service and who is called an indigent person in terms of the ELM Cemetery and Crematoria By-laws or in any other law;

Municipality includes, subject to the provisions of any other law, the municipal manager, but only if his inclusion is impliedly required or permitted by the ELM Cemetery and Crematoria By-laws and only in respect of the performance of any function, or the exercise of any duty, obligation or right in terms of the ELM Cemetery and Crematoria By-laws or any other law;

Next of kin means the surviving spouse, unless otherwise determined by customs, or if there is no surviving spouse, the surviving child or children, or where there is

no surviving child or are no surviving children, the closest surviving descendant or descendants, or there are no surviving descendants, the surviving parent or parents, or where there is no surviving parent or no surviving parents, the surviving sibling or siblings, or where there is no surviving sibling or are no surviving siblings, the other blood relation or blood relations of the deceased who are related to him or her in nearest degree, provided that where this policy requires the consent of the next of kin, and the next of kin refers to more than one person, in terms of this definition, then the consent of all these persons shall be required;

Officer in charge means the person authorised by Council to be in control of any cemetery;

Pauper means a dead person whose identity is unknown to the municipality despite all reasonable steps to identify him or her;

Policy means the policy for the burial and cremation of indigent and pauper persons;

Public holiday has the same meaning as in the Public Holidays Act, 1994 (Act 36 of 1994);

Regulations relating to the management of human remains means regulations relating to the management of human remains published under Notice No. R363 in Government Gazette No. 36473 dated 22 May 2013, under the National Health Act, 2003 (Act 61 of 2003);

Regulations: General control of human bodies, tissue, blood, blood products and gametes means regulations regarding general control of human bodies, tissue, blood, blood products and gametes, published under Government Notice R180 in Government Gazette No. 35099 dated 2 March 2012, under the National Health Act, 2003 (Act 61 of 2003);

The service means the Forensic Pathology Service in a Province and provides a medicolegal investigation of death due to natural or unnatural causes as defined in the Regulations regarding the rendering of forensic pathology service;

Regulations regarding the rendering of forensic pathology service means the regulations regarding the rendering of forensic pathology service; published in Government Notice No. R636 dated 20 July 2007, under the National Health Act, 2003 (Act 61 of 2003);

1. PROBLEM STATEMENT

1.1 Local government has a constitutional and statutory duty to regulate cemeteries, crematoria and funeral parlours, to provide for the interment of human remains in a dignified manner, and to ensure that appropriate Municipal Services are effectively and equitably provided.

1.2 The municipality provides support to deceased indigent persons and paupers, their families and communities by providing a simple and dignified burial or cremation service for such persons. This is in accordance with section 33 of the ELM Cemeteries and Crematoria By-laws, 2017.

1.3 Requests for the burial and cremation of indigent persons and paupers are currently processed and provided for in the absence of an approved policy in accordance with an established practice. The current best practice needs to be formalised in a written policy, and where necessary, more detailed criteria and a more structured decision-making process must be provided.

1.4 The criteria for the burial or cremation of indigent persons and paupers will, of necessity, differ from the criteria for indigent relief under the Municipality's Indigent Policy in the light of the need to bury or cremate a deceased's body as soon as reasonably possible after death and for relevant health considerations. The applicable criteria under the municipality's Indigent Policy are furthermore not necessarily appropriate and applicable to a deceased person who has died in indigent circumstances.

1.5 There is a need for simple criteria to decide on who may be considered indigent persons/paupers and qualify for burial or cremation by the municipality. These criteria will make a speedy and efficient application of this policy possible while making

provision for flexibility and allowing the authorised officials to investigate the circumstances of the deceased person and his or her family and communities.

2. DESIRED OUTCOMES

2.1. The policy will guide the decision making around the burial or cremation of a person that is considered indigent/pauper.

2.2. The outcome of this policy will be the burial or cremation of people considered to be indigent/pauper in order to afford that person a dignified burial or cremation.

3. POLICY PARAMETERS

3.1. This policy applies to the geographical jurisdiction of the municipality, but not to deceased persons who died in custody of a hospital, correctional services or SAPS.

3.2. It is current and accepted practice that a burial or cremation of an indigent persons and paupers who have died in Provincial hospital, or Provincial or National institution will be provided for by a service provider who has been appointed by the Mpumalanga Provincial Government.

3.3. This policy applies to all indigent persons and paupers who meet the criteria set out in this policy, irrespective of whether the body of the deceased person is claimed or not by the deceased's next of kin or relative, any other person, NGO, religious or welfare organisation.

3.4. In the case of requests for the burial of deceased persons who are not claimed by the deceased's next of kin or relative, any other person, NGO, religious or welfare organisation, the implementation of the policy is subject to the direction of the Health Officer and the Service, and the Regulations: General control of human bodies, tissue, blood, blood products and gametes.

4. ROLE PLAYERS AND STAKEHOLDERS

4.1 **Councillors:** Councillors must provide application forms to applicants and assist them to fill the forms out.

4.2 **Mayor or Speaker:** The Mayor or Speaker as the case may be, must write a letter/memorandum to the Municipal Manager declaring the family of the deceased as indigent and request for the burial.

4.3 **Cemetery Clerk:** Authorised officials within the Parks department must provide application forms to applicants, assist them to fill the forms out, interview applicants and make a recommendation to the Manager Parks.

4.4 **Manager Parks:** The Manager Parks must check and investigate the applications and make recommendations on behalf of Parks department to the Executive Director: Environmental and Waste Management.

4.5 **Executive Director: Environmental and Waste Management:** The application must then be submitted to the Executive Director: Environmental and Waste Management for approval and processing.

4.5 **Municipal Manager:** The Municipal Manager must check and make a final decision about applications. Once approval is granted, an official purchase order will be provided for the burial or cremation to the appointed service provider who will then proceed with the burial or cremation.

4.6 **Health officer:** The body of a deceased person that is not buried or claimed for burial in the circumstances described in Regulation 10(1) of the "Regulations: General control of human bodies, tissue, blood, blood products and gametes".

4.7 **Forensic Pathology Service:** A body is only released from the service after the requirements in terms of Regulation 30 of the Regulations regarding the rendering of forensic pathology service are complied with.

5. REGULATORY CONTEXT

5.1 Constitution of the Republic of South Africa, 1996

5.1.1 Part B of Schedule 5 of the Constitution provides that cemeteries, crematoria and funeral parlours are local government matters.

5.2. Local Government: Municipal Systems Act, 2000 (Act 32 of 2000)

5.2.1 Section 73 of the Local Government: Municipal Systems Act, Act 32 of 2000 places a general duty on municipalities to give effect to the provisions of the Constitution.

5.3. Emalahleni Local Municipality: Cemeteries and Crematoria By-law, 2017

5.3.1 The Cemeteries By-law provides for the control, regulation and development of cemeteries, the disposal of corpses and the interment of human remains in a dignified

manner, matters connected therewith, and seeks to ensure the proper management of cemeteries, crematoria and funeral undertakers within the area of jurisdiction of the municipality.

5.3.2 Section 33(1) provides that a body of a pauper must be buried at the cost of the municipality at a cemetery determined by the municipality.

5.3.3 Section 33(2) states that in the case of an indigent person, the municipality or service provider shall take reasonable steps to ascertain the religion of the deceased and bury him in the Section of the cemetery set apart for members of the denomination.

5.4 Health Act No 63 Of 1977 article 48 states;

The removal and burial of dead a body within the jurisdiction of the municipality is the responsibility of the municipality, subject to the provisions of the inquest Act, 1959 and the said Births, marriages and deaths registration Act, 1963 and whether or not any direction under subsection (1) has been issued, Responsibility for the removal and burial of the dead body which is unclaimed or which no competent person undertakes to bury and does bury and for the payment of all costs entailed thereby, shall devolve upon the local authority of the district in which the dead body is at the time when necessity of removal thereof first arise, save in the case of a person who has died in hospital or other institution, in which case such responsibility shall devolve upon the responsible authority of such hospital or institution.

5.5 National Health Act, 2003 (Act 61 of 2003)

5.5.1 Section 32(1) of this Act provides that every Metropolitan and District Municipality must ensure that appropriate Municipal Health Services are effectively and equitably provided in their respective areas.

5.6 Regulations: General control of human bodies, tissue, blood, blood products and gametes

5.6.1. Regulations 10(1) of these regulations provides that the body of a deceased person that is not buried, or claimed for a burial within 30 days after the death of that person by the spouse, partner, major child, parent, guardian, major brother, or major sister in the specific order mentioned or bona fide friend of the deceased, will be at the disposal of the health officer in whose area the body is.

5.6.2 The requirements pertaining to the disposal of unclaimed bodies of deceased persons, notice to the health officer, and preservation period of bodies before use, are set out in regulations 10, 11, 12 and 13, respectively, of the aforesaid regulations.

5.7 Regulations relating to the management of human remains

5.7.1 Regulation 29 of these regulations provides that any unclaimed bodies or unidentified human remains must be dealt with in accordance with the provisions of regulations 32 and 34 of the Regulations regarding the rendering of forensic pathology service; published in the Government Notice No. R636 dated 20 July 2007.

5.8 Regulations regarding the rendering of forensic pathology service

5.8.1 **Regulation 30** of these regulations provides that a body must only be released from the service after:

- (a) the spouse, partner, major child, parent, guardian, major brother, major sister, caregiver has given written consent, or by order of the Court;
- (b) the authorised person, after consultation with the investigating officer, has given approval for such release of the body;
- (c) an appropriate tissue or blood sample has been procured or other investigations done, where necessary, in order to assist with the medico-legal investigation and to facilitate the scientific investigation of the deceased.

5.8.2 **Regulation 31** of the regulations provides that where the person giving consent as contemplated in regulation 30(a), namely (the spouse, partner, major child, parent, guardian, major brother, major sister, care-giver consenting to the release of a body from the forensic pathology service in a province, providing medico-legal investigation of death due to natural or unnatural causes) is unable to pay for the burial of the body, the local municipality having jurisdiction of the area where the body was stored, must provide for a pauper burial or cremation of such a body.

5.8.3 **Regulation 32** of the regulations provides that a body that has not been identified must be moved to a freezer within seven days of admission, and if such body remains unidentified for 30 days, the local municipality under whose jurisdiction the designated facility is, must provide for a pauper burial or cremation of such a body.

5.8.4 **Regulation 32** of the regulations provides that the provincial head of the service must immediately be notified when a facility is requested to admit a body of a person who died of unnatural causes while being detained by the South African Police Service or the Department of Correctional Services as an awaiting-trial or convicted prisoner.

6. POLICY DIRECTIVE DETAILS

Qualification criteria

6.1 A deceased person may qualify for an indigent persons and pauper's burial or cremation in the following circumstances:

6.1.1 The deceased did not have an income greater than the state old age pension or state disability pension.

6.1.2 The deceased did not have an insurance policy or estate which could be used to pay for the burial.

6.1.3 No next of kin or relative with a legal duty to support the deceased, and with sufficient means, is able to pay for the burial or cremation costs of the deceased person.

6.1.4 No other person, religious organisation, NGO or welfare organisation has offered to pay for the burial or cremation costs of the deceased person.

6.1.5 The deceased in a South African residing in Emalahleni.

6.2 Where a critical emergency or any other unforeseen or unexpected situation arises in terms of which the municipality is required to fulfil its legal obligations in terms of the National Health Act, or any other applicable law, the municipality may exercise its sole discretion to accept an application for a burial or cremation of an indigent person or pauper without compliance of the aforesaid criteria, in order to fulfil those obligations.

6.3 Indigent burials can be arranged for anybody in the community if all the requirements are met.

6.3.1 All requests for indigent burials must be referred and considered by the Municipal Manager, Emalahleni Local Municipality.

6.3.2 The Municipal Manager must ensure that all the above mentioned procedures and requirements are met before an order could be placed at the funeral undertaker appointed by the municipality to bury a deceased person as indigent and pauper.

Municipality's obligation

6.4 The Municipality's obligations in terms of this policy will be limited to:

6.4.1 Provision of a public grave; or

6.4.2 A cremation.

6.4.3 Appointment of a service provider

6.4.4 Keep record of the grave number and application number in a burial register together with any personal information provided regarding the deceased

Service Provider's obligation

The designated service provider obligations in terms of this policy will be:

6.4.4 To book the burial or cremation at the Parks department.

6.4.5 To collect the body from the relevant mortuary

6.4.6 To provide a biodegradable non-emission type coffin.

6.4.7 Where a service is required, transport the deceased to a church or other place of worship or to a house for a simple, dignified service and then to the cemetery or crematorium.

Conditions of burial or cremation

6.5 At least two working days' notice is required for the approval of the application for a burial or cremation can be undertaken.

6.6 Indigent burials are conducted within 5 days of the date of death as storage increases costs.

6.7 Burials and cremations are to take place on weekdays only, excluding public holidays.

6.8 In the event of functions taking place after the funeral, irrespective of the financial source provided by any member of the family or community, the assistance will be considered null and void and the burial costs will be recovered.

6.9 No memorial work, tombstone and or exhumation. Should such an application be received in future, the applicant will be held responsible for the payment of the costs incurred during the funeral, except for exhumation authorised by the Magistrate to SAPS for investigations.

6.10 Should an application be received for the purpose indicated in section 6.9 above due to financial status having improved in the family, the person wanting to conduct the above process in 6.9 shall first reimburse the municipality whatever amount that

was spent during the pauper burial before permission to erect the tombstone can be given.

6.11 The complete service offered in terms of 6.37 below must be utilised. Applicants may not select parts of the service and provide an expensive coffin, or an elaborate or extensive funeral service.

6.12 Indigent persons and paupers burials may be accommodated in any section of a cemetery and at any cemetery at the discretion of the authorised officials.

6.13 The deceased shall be a South African citizen and resident within the municipal area of jurisdiction.

6.14 In the event that the deceased has died outside of Emalahleni the onus is on the next-of-kin to transport the body to area within which the scope of this policy shall be applicable.

6.15 The service provider should be registered in the municipality's data base and in possession of a valid Certificate of Competence issued by the Nkangala District Environmental Health Practitioner.

6.16 The service provider should be local and in operation in Emalahleni area of jurisdiction.

6.17 Any service rendered without prior investigation and/or approval and with no supporting documents and signing of form, will not be paid for.

6.18 Burial fee should not exceed an amount of six thousand rands including the booking and payment of a grave (R6000.00) per case.

Application forms

6.19 Application forms are available from:

6.19.1.1 Mayor or Speaker's Office

6.19.1.2 Directorate: Environmental and Waste Management

6.19.1.3 Authorised officials within the Parks department

Completion of forms

6.20 The applicant may obtain an application form for the burial or cremation of a destitute person by contacting the authorised officials or councillors.

6.21 The applicant must complete the application form.

6.22 If necessary, the applicant will be assisted to complete the form by a councillor, or an authorised official within the Parks department.

6.23 The conditions for an indigent person's and pauper's burial or cremation will be explained to the applicant.

6.24 The applicant may choose either burial or cremation.

6.25 The applicant must complete and sign the application form, and confirm the information supplied therein by means of an affidavit, and is required to depose to the affidavit by way of an oath or affirmation in the presence of a Commissioner of Oaths.

6.26 The applicant will be liable for all costs incurred by the municipality for the burial and criminal charges opened with local SAPS, in an event that the municipality has reasonable grounds that the application was fraudulent and that the deceased did not meet the criteria for indigent persons and pauper burial.

Required documentation

6.27 Burial order

6.28 Death Certificate

6.29 Affidavit from local SAPS, substantiated by an official letter from a Social Worker, Mayor, Speaker or a Ward Councillor. The said documentation must indicate the reasons for this request.

6.30 Proof from the family member/relative that they cannot bury the deceased.

Interview and processing of the application

6.31 The applicant will be interviewed by an authorised official within the Parks Department.

6.32 The Manager Parks will provide a recommendation for either the granting or refusal of the application for a destitute burial or cremation.

6.32.1 The Manager Parks authorised official within the Parks department in question has discretion to provide an alternative recommendation of either a burial or cremation, where the application for either a burial or cremation cannot be granted but where the alternative option is available instead.

6.32.2 Where an application is refused or where an alternative recommendation is made, reasons will be provided to the applicant.

6.33 The applicant has a right of appeal and may appeal against that decision in terms of section 62 of the Local Government: Municipal Systems Act (Act No. 32 of 2000).

6.34 If the application is recommended by the Manager Parks, it must be submitted to the Executive Director: Environmental and Waste Management for processing and approval. The Municipal Manager may then approve or make a final decision about

the application. Once approval is granted, an official purchase order will be provided for the burial or cremation to the appointed service provider who will then proceed with the burial or cremation.

6.35 The Manager Parks or authorised official within the Parks department, may on reasonable grounds interview or call for a statement under oath, or relevant documentation, from the next of kin, relative, other person, NGO or welfare organisation.

6.36 The applicant can establish if the application has been successful by contacting the Manager Parks.

Service provided

6.37 The designated service provider, will provide the following service on behalf of the Municipality:

6.37.1 Book the burial or cremation at the Parks department.

6.37.2 Collect the body from the relevant mortuary.

6.37.3 Provide a biodegradable non-emission type coffin.

6.37.4 Where a service is required, transport the deceased to a church or other place of worship or to a house for a simple, dignified service and then to the cemetery or crematorium.

6.38 A cemetery official must record the grave number and application number in a destitute burial register together with any personal information provided regarding the deceased.

7. IMPLEMENTATION PROGRAMME

7.1. This policy will apply upon approval by the Council of Emalahleni Local Municipality.

8. MONITORING, EVALUATION AND REVIEW

8.1. The details of the burial or cremation will be recorded in the burial register.

8.2. The policy will be monitored regularly and reviewed on a (5) five-year basis.

EMALAHLENI LOCAL MUNICIPALITY



INDIGENT AND PAUPER BURIAL APPLICATION FORM

DECEASED NAME:

ID:

DATE OF DEATH:

WARD:

WARD CLLR:

CELL NO.:

NOTIFICATION DATE:

MORTUARY/HOSP:

UNDERTAKER/CREMATORIUM:

CELL NO.:

RATE-PAYMENT:

COMMENTS

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DECLARATION BY MAYOR/SPEAKER/WARD CLLR

In terms of the rules of the indigent persons and pauper burial policy I hereby declare that the body and/or his/her next-of-kin truly deserve Council assistance and should the contrary be proven, no assistance will be received and if already paid I shall be held liable for reimbursement of the amount to Emalahleni Local Municipality account.

- (a) For more information please contact the relative/informant whose details are as follows:
- (b) Relative's Name: ID
- Cell:

