

DRAFT POLICY FOR THE BURIAL OF DESTITUTE /INDEGENT AND PAUPERS PERSONS

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DEFINITIONS

In this policy, 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 BPM 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 land is excavated for the interment of a body or ashes or when a structure is employed for the interment of a body or ashes;

‘Cemeteries coordinator’ means the official who is responsible for coordinating all cemetery matters on behalf of BPM;

‘BPM’ means the Ba-Phalaborwa municipality in terms of the Local Government: Municipal Structures Act, 1998, or any structure or employee of the BPM acting in terms of delegated authority;

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

‘Council’ means the Municipal Council of Ba-Phalaborwa;

‘Credit Control and Debt Collection Policy’ means the BPM: Credit Control and Debt Collection Policy and subsequent versions of this policy;

‘Designated service provider’ means a company which has been awarded the order to provide the service of burying or cremating a destitute person/s on behalf of BPM;

‘Destitute person’ means a person who has died in destitute circumstances within the geographic boundaries of BPM where no relative, other person, NGO, religious or welfare organisation is able to pay for the burial or cremation cost of the deceased person;

‘Paupers’ Means a deceased person without a next of kin or an unclaimed body.

‘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 Officer’ means the Health Officer appointed by the Member of the Executive Council in the Provincial Department of Health under regulation 20 of the Regulations: General control of human bodies, tissue, blood, blood products and gametes;

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

‘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 refer to more than one person, in terms of this definition, then the consent of all these persons shall be required;

‘Policy’ means the policy for the burial of destitute 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 medico legal 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. ABBREVIATIONS

In this policy, unless the context otherwise indicates –

‘BPM’ means the Ba-Phalaborwa Municipality;

‘IDP’ means the Ba-Phalaborwa's Integrated Development Plan;

‘NGO’ means non-governmental organisation;

2. STRATEGIC INTENT

2.1. Integrated Development Plan

3.1.1 This policy is aligned with the strategic focus areas of the IDP, in particular a caring municipality.

2.2. Strategic Plan.

3.2.1 This policy is aligned with the approved strategic plan and SDBIP in that it gives effect to the Vision and Mission of Ba-Phalaborwa in respect of service delivery and legislative compliance.

3. POLICY PARAMETERS

3.1. This policy applies to the geographical jurisdiction of the BPM, but not to deceased persons who died in a Provincial hospital, or a Provincial or National institution.

3.2. It is current and accepted practice that a burial of unidentified or unknown persons 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 relevant institution, and that only the provision of a grave will be the responsibility of the BPM.

3.3. This policy applies to all destitute persons 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. Deceased persons not claimed are historically referred to as 'paupers' and will be handled as in 4.2 above, but for the purposes of this policy, and the term 'destitute persons' applies to deceased destitute persons whether registered as indigents or not.

3.5. The term 'indigent person' is also not used in this policy in order to distinguish between the criteria for indigent relief.

3.6. 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 Manager Parks and Cemeteries, 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 and the submission thereof.

4.2. **Parks and cemeteries officials:** Authorised officials within the BPM Parks department must provide application forms to applicants, assist them to fill the forms out, interview applicants and make a recommendation to the Parks and cemeteries manager.

4.3. **Cemeteries Coordinator:** The Cemeteries Coordinator must check and investigate the applications and make recommendations on behalf of Parks and Cemeteries. The application must then be submitted to the BPM Community and Social Services Department for approval and processing.

4.4 **Health official:** An authorised official in the Mopani District Municipality Community and Social Services who must be in attendance at any pauper burial in any cemetery belonging to the BPM municipality.

4.5. **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.

4.6. **SAPS:** An authorised official from the South African Police Services must be in attendance at any pauper burial in any cemetery belonging to the BPM municipality.

5. ROLES AND RESPONSIBILITIES

5.1. The Ba-Phalaborwa Municipality to ensure that their pauper/indigent burial policy is approved and adopted and that provision is made in the budget for such pauper/indigent burials.

5.2. This policy must be included as an integral part of the Ba-Phalaborwa Indigent Policy for oversight and assistance by the Chief Financial Officer or his duly authorized and appointed official.

5.3. Ba-Phalaborwa Municipality must make land available for the execution of this service at the relevant cemetery, provide the grave and assist at the funeral with grave digging and closing.

6. REGULATORY CONTEXT

6.1. Constitution of the Republic of South Africa, 1996

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

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

6.2.1. 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.

6.3. Ba- Phalaborwa: Cemeteries By-law,

6.3.1. 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.

6.3.2. The Cemeteries By-law provides that a person making application for the burial of a destitute person must make a declaration to that effect.

6.4. National Health Act, 2003 (Act 61 of 2003)

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

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

6.5.1. 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.

6.5.2. 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.

6.6. Regulations relating to the management of human remains

6.6.1. 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.

6.7. Regulations regarding the rendering of forensic pathology service

6.7.1. 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.

6.7.2. 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 of such a body.

6.7.3. 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 of such a body.

6.7.4. 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.

7. Pauper and indigent/ Destitute burial

7.1. Paupers burial

This is a process of ensuring that, the burial of a pauper is executed by the relevant authority or council in a manner termed as human dignified by making sure that all the basic requirements needed to bury a dead person are taken into account.

7.1.1. The deceased must have died within the boundaries of the Ba-Phalaborwa Municipality within the area of the Mopani District.

7.1.2. The deceased must be unidentified, unknown or abandoned.

7.1.3. The institution as per the relevant legislation identified as a hospital, SAPS or municipality in which the person died will be responsible for the burial costs and to submit the application thereof to the municipality with all allied administration

7.1.4. The municipality, shall be responsible for the cost of the graves only in event of the National Health Service or SAPS applications for pauper burials who shall cover all costs for burials adjudged as their responsibility

7.1.5. The Municipal Manager must be responsible for authorizing the pauper burial in consultation with Mayor.

7.1.6. The municipality shall make the necessary arrangements for burial.

7.1.7. Paupers burial will be conducted in line with relevant legislation.

7.1.8. The following supportive documents to substantiate the application must be submitted:

- a. Written application from the responsible body. (hospital, SAPS etc.)
- b. SAPS investigation report on identification and next of kin investigation
- c. Letter from forensic services and death confirmation letter with allied body release administration.
- d. Confirmation letter of approval by the Municipal Manager
- e. All relevant legislation including the death certificate and burial order from Home affairs to be submitted by the appointed funeral undertaker.
- f. Grave application forms and confirmation of the date of internment
- g. Confirmation of attendance at the burial by SAPS and Environmental Health officers in terms of the National Health Act.

7.1.9. There will be no provision for payment other than to the contracted undertaker or service provider to execute the burial of the corpse.

7.1.10. Burials must be undertaken during weekdays only at a time and place as Stipulated by the Municipality.

7.1.11. The Parks and Cemeteries Section of the Ba-Phalaborwa Municipality within the Directorate Community and Social Services will be responsible for the execution of this Policy and all allied administration.

7.1.12. All pauper burials to be undertaken within the district shall take place under the supervision of the Environmental Health Practitioner, who will make sure that, all the necessary basic requirements are adhered to in terms of relevant legislation.

7.1.13. An appointed representative from SAPS to be in attendance for all pauper and unidentified body burials.

7.1.14. The municipality shall not be responsible for the removal of the body from home or street wherever it is found dead since that process is the prerogative of the South African Police Services (SAPS).

7.1.15. The municipality shall engage itself after all the processes necessary to be conducted by other authorities on a dead body have been confirmed to be concluded and that, a letter from that authority confirming the same must be forwarded to the municipality.

7.1.16. All required administration from any authority whatsoever that has bearing on each individual case shall be submitted to the Ba-Phalaborwa Municipality prior to any authorization being given

7.2. Indigent/ Destitute burial

7.2.1. The deceased must have died within the boundaries of the Ba-Phalaborwa Municipality within the area of the Mopani District.

7.2.2. The deceased and or the family must have been unemployed, not receiving any grants or pensions to cover for the burial expenses and must be currently registered on the indigent register in terms of such registration criteria.

7.2.3. If the next of kin is available, he/she must sign a right of claim over the body to the Council to dispose of it as the Council deems fit e.g. burying.

7.2.4. The Municipal Manager must be responsible for authorizing the pauper burial in consultation with Mayor.

7.2.5. **The burial will be conducted by the undertaker contracted to the municipality, and where there is no undertaker contracted by the municipality, the municipality shall make the necessary arrangements to urgently appoint an undertaker via their SCM procedures to bury such body in a dignified manner.**

7.2.6. No transport must be provided to the family for attending the funeral. (if applicable)

7.2.7. No financial contributions must be made towards food, tents etc. (if applicable)

7.2.8. Burials must be undertaken during weekdays only at a time and place as Stipulated by the Municipality

7.2.9. 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.

7.2.10. No memorial, tombstone will be erected on the gravesite and no exhumation will o memorial, tombstone will be erected on the gravesite and no exhumation will be allowed. Should such an application be received in future, the applicant will be held responsible for the payment of the costs incurred during the funeral

7.2.11. Should an application be received for the purpose indicated in section 10 above due to financial status having improved in the family, the person wanting to conduct the above process in 10 shall first reimburse the municipality whatever amount that was spent during the pauper burial before permission to erect the tombstone can be given.

8. POLICY DIRECTIVE DETAILS

Qualification criteria

8.1. A deceased person may qualify for a destitute person's burial in the following circumstances:

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

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

8.1.3. 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.

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

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

BPM's obligation

8.3. The municipalities obligations in terms of this policy will be limited to:

8.3.1. Provision of a biodegradable non-emission type coffin.

8.3.2. Provision of a prepared public grave and the closure thereof.

8.3.3. Contracting of a burial service provider if a donation from such a company cannot be sourced.

Conditions of burial.

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

8.5. Burials are to take place on weekdays only, excluding public holidays.

8.6. No memorial work is permitted on the grave.

8.7. Destitute burials may be accommodated in any section of a cemetery and at any cemetery at the discretion of the authorised officials.

Application forms

8.9. Application forms are available from:

8.9.1.1. All councillors

8.9.1.2. Parks and Cemeteries Manager.

8.9.1.3. Authorised officials within the Parks and Cemeteries department

Completion of forms

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

8.11. The applicant must complete the application form.

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

8.13. The conditions for a destitute burial or cremation will be explained to the applicant.

8.14. 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.

Interview and processing of the application

8.16. The applicant will be interviewed by Parks and Cemeteries Manager or an authorised official within the Parks Department.

8.17. The manager within the BPM Parks department will provide a recommendation for either the granting or refusal of the application for a destitute burial or cremation.

8.18. 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).

8.19. If the application is recommended by the Cemeteries Coordinator, it must be delivered by hand to the BPM Municipal Manager for approval.

8.20. The manager, 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.

8.21. The applicant can establish if the application has been successful by contacting the BPM Municipal Parks and Cemeteries Manager.

9. Supportive Documents

The following supportive documents to substantiate the application must be submitted.

- a. Written application with supporting financial position statements (affidavits from SAPS) by next of kin.
- b. Letters from the Department of Social Welfare and Development, relevant Ward Councillor and or the Church leader, confirming the poverty conditions being experienced.
- c. That the person is registered with the Municipality on the indigent register
- d. Identity document copy of the deceased duly certified.
- e. Supporting written report from the ward councillor or Kgoshi.
- f. Copy of death certificate.
- g. Burial Order

10. IMPLEMENTATION PROGRAMME

10.1. This policy will apply with immediate effect.

11. MONITORING, EVALUATION AND REVIEW

11.1. The details of the burial or cremation will be recorded in a destitute burial register.

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

12. COMPLIANCE WITH THE PANDEMIC

This policy will be implemented in line with all pandemic guidelines.

**ACTING MUNICIPAL MANAGER
JB SELAPYANE**

DATE

COUNCIL RESOLUTION:

DATE: