



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

POLICY

BURIAL OR CREMATION OF DESTITUTE PERSONS (POLICY NUMBER 40504)

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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 City 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 the City;
'City'	means the City of Cape Town, a municipality established by the City of Cape Town Establishment Notice No. 479 of 22 September 2000, issued in terms of the Local Government: Municipal Structures Act, 1998, or any structure or employee of the City acting in terms of delegated authority;
'Constitution'	means the Constitution of the Republic of South Africa, 1996;
'Council'	means the Municipal Council of the City;
'Credit Control and Debt Collection Policy'	means the City of Cape Town: Credit Control and Debt Collection Policy 2014/2015, and subsequent versions of this policy;
'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 City;
'Destitute person'	means a person who has died in destitute circumstances within the geographic boundaries of the City where no relative, other person, NGO, religious or welfare organisation is able to pay for the burial or cremation cost of the deceased person;
'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 where 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;
'Policy'	means the policy for the burial and cremation 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);

ABBREVIATIONS

In this policy, unless the context otherwise indicates –

'CDS'	means the City of Cape Town's City Development Strategy;
'IDP'	means the City of Cape Town's Integrated Development Plan;
'NGO'	means non-governmental organisation;
'SDS'	means the City of Cape Town's Social Development Strategy.

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 Health Services are effectively and equitably provided.
- 1.2. The City provides support to deceased destitute persons, their families and communities by providing a simple and dignified burial or cremation service for such persons. This is in

accordance with section 9 of the City's Cemeteries, Crematoria and Funeral Undertakers By-law, 2011.

- 1.3. Requests for the burial and cremation of destitute persons 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. It is also recognised that a high degree of internal cooperation within the City between the City Parks Department and the City's Health Directorate is required to ensure the effective implementation of this policy.
- 1.5. The criteria for the burial or cremation of destitute persons will, of necessity, differ from the criteria for indigent relief under the City's Credit Control and Debt Collection 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 City's Credit Control and Debt Collection Policy are furthermore not necessarily appropriate and applicable to a deceased person who has died in destitute circumstances.
- 1.6. There is a need for simple criteria to decide on who may be considered destitute and qualify for burial or cremation by the City. 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 community ties.

2. DESIRED OUTCOMES

- 2.1. The policy will guide the decision making around the burial or cremation of a person that is considered destitute.
- 2.2. The outcome of this policy will be the burial or cremation of people considered to be destitute in order to afford that person a dignified burial or cremation.

3. STRATEGIC INTENT

3.1 Integrated Development Plan

- 3.1.1 This policy is aligned with the strategic focus areas of the IDP, in particular a caring city, and an inclusive city.

3.2 Social Development Strategy

- 3.2.1 This policy is aligned with the SDS in that it gives effect to Objective 3: 'Support the most vulnerable through enhancing access to infrastructure and services' to enable poor families or individuals to access services for a dignified burial or cremation.

3.3 City Development Strategy

- 3.3.1 This policy gives effect to the settlement and cultural transitions stated in the City Development Strategy.

4. POLICY PARAMETERS

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

- 4.2. It is current and accepted practice that a burial or cremation of destitute 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 Western Cape Provincial Government.
- 4.3. 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.
- 4.4. Deceased persons not claimed are historically referred to as 'paupers' but this terminology is not used for the purposes of this policy, and the term 'destitute persons' applies to deceased destitute persons whether the body is claimed or not.
- 4.5. The term 'indigent person' is also not used in this policy in order to distinguish between the criteria for indigent relief under the City's Credit Control and Debt Collection Policy.
- 4.6. 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 Health Officer and the Service, and the Regulations: General control of human bodies, tissue, blood, blood products and gametes.

5. ROLE PLAYERS AND STAKEHOLDERS

- 5.1. **Councillors:** Councillors must provide application forms to applicants and assist them to fill the forms out.
- 5.2. **Subcouncil managers:** Subcouncil managers must provide application forms to applicants and assist them to fill the forms out, interview applicants and make a recommendation to the Cemeteries Coordinator.
- 5.3. **City Parks officials:** Authorised officials within the City Parks department must provide application forms to applicants, assist them to fill the forms out, interview applicants and make a recommendation to the Cemeteries Co-ordinator.
- 5.4. **Cemeteries Coordinator:** The Cemeteries Coordinator must check and investigate the applications and make recommendations on behalf of City Parks. The application must then be submitted to the City's Health Directorate for approval and processing.
- 5.5. **City Health official:** An authorised official in the City Health Directorate must check and make a final decision about applications. Once approval is granted, he or she must provide an official purchase order for the burial or cremation to the appointed service provider who will then proceed with the burial or cremation.
- 5.6. **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" (referred to below at paragraph 6.5) is at the disposal of the health officer.
- 5.7. **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.

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 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. City of Cape Town: Cemeteries, Crematoria and Funeral Undertakers By-law, 2011

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 City.

6.3.2. Section 9 of 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 Metropolitan and District Municipality must ensure that appropriate Municipal 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, care-giver 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 or cremation 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 or cremation 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 or the Department of Correctional Services as an awaiting-trial or convicted prisoner.

7. POLICY DIRECTIVE DETAILS

Qualification criteria

- 7.1. A deceased person may qualify for a destitute person's burial or cremation in the following circumstances:
 - 7.1.1. The deceased did not have an income greater than the state old age pension or state disability pension.
 - 7.1.2. The deceased did not have an insurance policy or estate which could be used to pay for the burial.
 - 7.1.3. 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.
 - 7.1.4. No other person, religious organisation, NGO or welfare organisation has offered to pay for the burial or cremation costs of the deceased person.
- 7.2. Where a critical emergency or any other unforeseen or unexpected situation arises in terms of which the City is required to fulfil its legal obligations in terms of the National Health Act, or any other applicable law, the City 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.

City's obligation

- 7.3. The City's obligations in terms of this policy will be limited to:
 - 7.3.1. Transport of the body may include:
 - 7.3.1.1. Transport to and from the appointed service provider's mortuary.
 - 7.3.1.2. Transport to a religious place of worship or to a house for a basic, dignified and respectful service and then to a cemetery or crematorium.
 - 7.3.1.3. In the circumstances where no relative of the deceased or other person or entity has claimed the deceased's body, no service will be provided and transport will be limited to a trip from the mortuary to the cemetery or the crematorium.
 - 7.3.2. Provision of a biodegradable non-emission type coffin.
 - 7.3.3. Provision of a public grave; or

7.3.4. A cremation.

Conditions of burial or cremation

- 7.4. At least two working days' notice is required from the approval of the application for a burial or cremation can be undertaken.
- 7.5. Burials and cremations are to take place on weekdays only, excluding public holidays.
- 7.6. No memorial work is permitted on the grave.
- 7.7. The complete service offered in terms of 7.21 and 7.22 below must be utilised. Applicants may not select parts of the service and provide an expensive coffin, or an elaborate or extensive funeral service.
- 7.8. Destitute burials may be accommodated in any section of a cemetery and at any cemetery at the discretion of the authorised officials.

Application forms

- 7.9. Application forms are available from:

- 7.9.1.1. All councillors
- 7.9.1.2. Subcouncil managers
- 7.9.1.3. Authorised officials within the City Parks department

Completion of forms

- 7.10. The applicant may obtain an application form for the burial or cremation of a destitute person by contacting the authorised officials.
- 7.11. The applicant must complete the application form.
- 7.12. If necessary, the applicant will be assisted to complete the form by a councillor, subcouncil manager or an authorised official within the City Parks department.
- 7.13. The conditions for a destitute burial or cremation will be explained to the applicant.
- 7.14. The applicant may choose either burial or cremation.
- 7.15. 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. (See Part 2 of the application form].

Interview and processing of the application

- 7.16. The applicant will be interviewed by a subcouncil manager or an authorised official within the City Parks Department.
- 7.17. The subcouncil manager or authorised official within the City Parks department in question (see part 3 of the application form) will provide a recommendation for either the granting or refusal of the application for a destitute burial or cremation.
 - 7.17.1. The subcouncil manager or authorised official within the City 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.
 - 7.17.2. Where an application is refused or where an alternative recommendation is made, reasons will be provided to the applicant.

- 7.18. 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).
- 7.19. If the application is recommended by the Cemeteries Coordinator, it must be delivered by hand, fax or e-mail to the City Health Directorate for approval. The City Health Directorate may then place an official order with the appointed service provider.
- 7.20. The subcouncil manager, authorised official within the City Parks department, or authorised official of the City Health 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.
- 7.21. The applicant can establish if the application has been successful by contacting the City Health official.

Service provided

- 7.22. The designated service provider, will provide the following service on behalf of the City:
 - 7.22.1. Book the burial or cremation at the relevant cemetery or crematorium.
 - 7.22.2. Collect the body from the relevant mortuary.
 - 7.22.3. Provide a biodegradable non-emission type coffin.
 - 7.22.4. 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.
- 7.23. 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.

8. IMPLEMENTATION PROGRAMME

- 8.1. This policy will apply with immediate effect.

9. MONITORING, EVALUATION AND REVIEW

- 9.1. The details of the burial or cremation will be recorded in the destitute burial register.
- 9.2. The policy will be monitored regularly and reviewed on a (5) five-year basis.