

CHAPTER 4

CEMETERIES

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7-4-1: **CITY CEMETERY:** The burial ground of the City shall be known and designated by the name of Providence City Cemetery. (1977 Code § 8-202)

7-4-2: **DEFINITIONS:** The following words or phrases shall have the following meanings unless the context otherwise clearly requires:

LOT: Shall include the partial lots or single graves in the City cemetery.

LOT OWNER OR PURCHASER AND GRAVE OWNER OR PURCHASER: The owner or purchaser of burial privileges or the collateral right of use of any burial lot evidenced by a deed or burial right for a described lot or by proved and recognized descent or devise from the original owner. (1977 Code § 8-202)

7-4-3: **APPLICABILITY:** All cemeteries owned and/or maintained by the City or which may hereafter be acquired by the City wherever situated are hereby declared subject to the provisions of this Chapter. (1977 Code § 8-203)

7-4-4: **SEXTON:**

A. Created: There is hereby created the position of Sexton. (1977 Code § 8-211; 1998 Code)

- B. Duties: The Sexton shall have the general supervision and administration of the City cemetery, including, but not limited to:
1. Recommending to the City Council such additional rules and regulations as may be necessary for the operation, maintenance, use and protection of the cemetery.
 2. Subdividing the cemetery into the lots and grave sites.
 3. Maintaining a record of the location of the graves and preventing any lot from being used beyond its capacity.
 4. Keeping in proper repair the enclosure around the cemetery and preventing its being entered by animals and, so far as practical, preventing the destruction or defacing of any tablet or marker placed or erected therein.
 5. Keeping a duplicate plat of the cemetery and, at the request of any person wishing to purchase any of the lots or parts of lots, pointing out any of the lots or parts of lots for sale; and upon disposal of any lots or part thereof, notifying the City Treasurer of such fact. The City Treasurer shall, after payment of the lot price has been received in the treasury, issue a certificate of burial rights which shall describe the lot or grave to which the right to burial is granted. The certificate shall be signed by the City Treasurer.
 6. Opening any graves in the cemetery upon application to the Sexton being made by the City Recorder or by any person having the right to make such application and being responsible for closing all graves.
 7. Removing floral pieces or displays left on any grave as deemed necessary to the appearance of the cemetery, but such floral pieces or displays shall not be removed sooner than seven (7) days after original placement, except in emergency.
 8. Keeping the streets, alleys, walks and avenues in the cemetery in good order and unobstructed. (1977 Code § 8-212; 1998 Code)

7-4-5: **BURIALS:**

- A. Certificate Required: It shall be unlawful for any person to bury the body of a deceased person in the City cemetery without first obtaining a certificate of burial right for the lot used or producing satisfactory evidence of a right to burial based on a properly acquired certificate of burial right. (1977 Code § 8-222; 1998 Code)
- B. Registration: Before any deceased person may be buried in the City cemetery, the relatives or person having charge of the deceased shall provide the City information about the deceased regarding his or her name, when and where born, the date and

cause of death, the name of the attending physician, date of burial, name of cemetery and the description of the location of the grave. (1977 Code § 8-223; 1998 Code)

C. Vaults:

1. Unless waived in writing by the Sexton, it shall be unlawful for any person to be buried in the cemetery unless the casket shall be placed in a vault made of concrete, fiberglass, steel, or brick lined or of such other material approved by the City Council, substantially constructed and covered with a similar durable material.

2. No wood shall be used as a permanent part of the construction of any part of the vault. (1977 Code § 8-225; 1998 Code)

D. Unlawful Acts:

1. It is an infraction, subject to penalty as provided in Section 1-4-1 of this Code, for any person to:

a. Disinter any body buried in any cemetery, except under the direction of the Sexton who shall, before disinterment, require a written permission from both the Bear River Health Officer and the owner of the lot or his or her heirs, which written authorization shall be filed and preserved in a record kept for such purposes.

b. Disinter or remove the body of a person who has died from a contagious disease within two (2) years after the date of burial, unless the body was buried in a hermetically-sealed casket or vault and is found to be so incased at the time of disinterment.

2. It is an infraction, subject to penalty as provided in Section 1-4-1 of this Code, to inter anything other than the remains of human bodies in cemeteries.

3. It is an infraction, subject to penalty as provided in Section 1-4-1 of this Code, to bury the body of any person within the City, except in the City cemetery or a private cemetery, unless by special permission of the City Council under such rules and regulations that it may prescribe. (1977 Code § 8-224; 1998 Code)

7-4-6: **FEES AND CHARGES:**

A. Established; Authority: The City Council shall from time to time by resolution, fix the size of lots, the price at which burial rights shall be sold and the fees which shall be charged for the various cemetery services to be provided. (1977 Code § 8-224; 1998 Code)

B. Collection: The City Recorder, and such other persons as the City Council may designate, are hereby authorized and required to collect in advance, prices and fees for the opening and closing of graves or other services, which shall include, but not limited to, properly disinterring bodies and properly restoring the earth and grounds, recording each burial, disinterment or removal, and raised monument privileges. The fees shall be such amounts as are determined by the City Council from time to time by resolution. (1977 Code § 8-241)

C. Opening Graves:

1. No grave shall be opened in the City cemetery until payment of a fee for the labor and expense in so opening the grave shall be paid.

2. The presentation of a receipt from the City Recorder or person designated by the City Council when presented to the Sexton, shall be authority to open a grave for the burial of a deceased person. However, upon a contract being entered into between any mortician and the City wherein the mortician agrees to be responsible and liable for fees for the opening of a grave, and wherein that mortician will be personally liable for such fees and for perpetual care payments, the City Recorder or authorized person may give the Sexton authority to open graves without the presentation of a receipt from the City Recorder or authorized person. (1977 Code § 8-242; 1998 Code)

7-4-7: **LOT SALES:**

A. Authority; Records: The City Recorder, and such other person as the City Council may designate, are hereby authorized to sell the use of lots in the City cemetery for burial purposes only and to collect all sums arising from the sale. The City Recorder shall keep a complete record of all sales, which record shall describe the location of the lot purchased and the price paid therefore. The City Recorder or designated person shall deliver to each purchaser a certificate of burial rights for each lot purchased, which certificate shall, among other things, describe the location of the lot, the purchase price, and the type of maintenance services which are to be provided, e.g., perpetual care, prepaid continued maintenance, or currently paid services.

B. Purchase Price, Scope of: A certificate and rights to burial shall be exempt from execution, taxation or assessment for care and maintenance from and after full payment of the purchase price. Payments made pursuant of this Section shall not be construed to be in payment for cemetery services other than perpetual care or prepaid maintenance.

C. Services Included: Perpetual care or prepaid continued maintenance shall be deemed to include the filling of the grave, the placing of topsoil upon the grave,

seeding the grave with grass, and watering and cutting the grass. No other services are included.

D. Improvements, Changes and Services: No other improvements, changes, or service, except perpetual care, shall be made on any lot without the certificate holder or his heirs first submitting to and receiving from the Sexton, written approval for such improvements, changes or services, which improvements, changes or services shall be subject to the rules and regulations promulgated by the City Council. (1977 Code § 8-251; 1998 Code)

E. Resale Restrictions:

1. From and after April 15, 1977, the lots sold by the City shall not be further sold, transferred, conveyed or assigned to any person except the City. The City hereby agrees to buy back any City cemetery grave lot which it may hereafter sell. The repurchase of such lots shall be for the original price paid by the purchaser if greater than \$50, or the current selling price of the lot, whichever is less. If the original price paid by the purchaser is less than \$50, the City will repurchase the lot for \$50. (OM 98-029 12/08/98)

2. Whenever a certificate to burial rights or lots reverts to the City, as provided for in this subsection, or becomes vested in the City for any reason, before new certificates are issued, the original certificate shall be cancelled or an assignment given, and the record shall be so changed.

3. The certificates shall be issued and signed by the Mayor and shall be attested by the City Recorder. All lots or parts of lots, as provided in this subsection, together with all improvements, shall be exempt from execution and from taxation and assessment for care and maintenance charges from and after said payment. (1977 Code § 8-252)

4. Cemetery lots may be given by will to members of the family and old certificate turned in and new one issued at the cost of twenty dollars (\$20.00). (1977 Code § 8-252; 1998 Code)

7-4-8: **PERPETUAL CARE LOTS:**

A. Scope Of Care: The essential perpetual care that the City agrees to give shall consist of care of the cemetery generally, and shall include, but is not limited to, mowing of all lots and graves at reasonable intervals, resodding, seeding, and filling in sunken graves, sodding the surface of the graves to lot level, removing dead flowers and trimming trees and shrubbery when necessary, raking and cleaning the lots and straightening of tilting stones or markers, but shall not include repairing or replacing markers or memorial structures of any nature, except when the need for

repair or replacement is directly caused by the City. (1977 Code § 8-262)

B. Contracting For Care:

1. No grave shall be hereafter opened in the cemetery of this City until perpetual care upon the lot where the grave is to be opened shall have been contracted for with the City, or perpetual care thereon paid. Should it be the desire of any person to have a grave opened and the body interred therein and perpetual care shall not have been previously contracted for or paid in full for the lot therein, the person may either pay the full purchase price for perpetual care or enter into a contract wherein payment shall be agreed. (1977 Code § 8-261)

2. The agreement shall provide for a down payment in the amount of twenty percent (20%) of the total purchase price of the cost of the lot, and shall further provide for the payment of monthly installments over a period not to exceed twenty (20) months. The monthly installments shall be in the amounts equal to the balance of the contract, divided by the number of months which the contract is to run, plus two (2) months extra payment to pay for the privilege of making the payments in installments or at the current borrowing rate required of the City.

3. The installment contract for perpetual care of, or purchase of a lot with perpetual care, shall provide for collection by the City in the event of a default and such collection shall be by civil action, and the defendant therein shall pay cost of collection, together with reasonable attorney fees to the City, and shall also pay interest at the rate required of the City upon the past due installments. All installments shall immediately become due upon the default of any of the installments; provided however, that when perpetual care for any lot in the City cemetery or portion thereof, has not been paid for a period of ten (10) years, then, and in such an event, the unused portion of the lot shall thereafter escheat to the City, and the title thereof shall revert to the City, which shall thereafter have the right, option, and privilege to sell and dispose of unused cemetery property, as is in this Chapter provided, upon conditions that the City shall thereafter maintain perpetually without cost or fee the portion of the lot occupied by a grave or graves prior to the date when the remaining property escheated to the City. (1977 Code § 8-261; 1998 Code)

C. Fund Created; Use:

1. There hereby is established a Perpetual Care Fund according to the laws of the State and this Chapter. All funds received from the sale of perpetual care services shall be placed in a special Perpetual Care Fund, invested in compliance with the laws of the State and used for the purpose herein provided.

2. The income from the Perpetual Care Fund shall be used to pay the upkeep and

development of the cemetery. The City may borrow from the fund from time to time, but any funds borrowed shall be repaid to the Fund with interest thereon at the prevailing rate paid by the City to borrow funds from commercial lenders.

3. If the City borrows from the Fund, it shall pay into a fund for the operation of the cemetery the interest accrued upon the money annually. Should it be found that the interest returned upon the Perpetual Care Funds shall be more than is required to pay for the operation and upkeep of the City cemetery, then the surplus shall be added to the principal amount of the Perpetual Care Fund herein created, and shall be so handled until changed by resolution to provide for the use of such accumulated interest. (1977 Code § 8-271)

D. Duties Of Officials:

1. Treasurer: It shall be the duty of the City Treasurer to keep an accurate record of the perpetual care trust fund account, including investments, to see that the principal portion thereof is properly invested in accordance with resolutions of the City Council and the laws of the State, and to advise the Mayor when funds are available for investment in the amount of one thousand dollars (\$1,000.00) or more. The Mayor shall advise the City Council of the availability of such funds. (1977 Code § 8-272)

2. City Council: It shall be the duty of the City Council, when funds are available for investment, to direct by resolution all purchases of securities for the Perpetual Care Fund or to name a suitable trustee for such investment. (1977 Code § 8-263)

E. Investment Income: All income from investments held in the Perpetual Care Fund shall be quarterly credited to the Cemetery Maintenance Fund for use in providing the perpetual care as required herein. (1977 Code § 8-274)

7-4-9: **NONPERPETUAL CARE LOTS; REVERSION:**

A. Collection by City: When any owner of any lot or portion of a lot in the cemetery shall have failed to pay the cost of services rendered by the City or its employees in watering, beautifying, maintaining or caring for any lots or portions thereof in the City cemetery for which perpetual care has not been purchased in accordance with the provisions of this Chapter, and such failure to pay has continued for a period of six (6) months, the City may pursue collection of such costs in a court of law. A court action may be pursued for the purpose of seeking judgment against the owner and thereafter attaching any of the assets of the owner, including an attachment of the lots or portions of lots upon which the owner has failed to make payment for maintenance service.

B. Cancellation of Certificate: As an additional remedy, or in lieu of seeking collection

in a court or law, the City may cancel the owner's certificate or deed representing rights to burial on the unoccupied lots or portions of lots and causing ownership of lots or portions thereof to revert back to the City by following the procedure set forth in this Section. (1977 Code § 8-282)

7-4-10: **INDIGENTS:**

- A. Portion of Cemetery Designated: The City Council may by resolution designate a portion of the City cemetery to the burial of indigents. Whenever it is made to appear to the Mayor by proof submitted to him by the City Recorder that any person who has died does not have an estate sufficient to pay the purchase price of a lot in the cemetery, and that the nearest relative or representative of such deceased person desires to have the body of such deceased interred in the cemetery, the Mayor may grant burial space for such deceased person at the request made to him by the City Recorder.

- B. Decision; Report to the City Council: The Mayor shall communicate his decision to both the City Recorder and the Sexton. The Mayor shall give report of his decision, whether affirmative or negative, to the City Council at its regular meeting. All strangers without funds or other persons who may die in the City may be granted the privilege granted herein. (1977 Code § 8-291; 1998 Code)

7-4-11: **RULES AND REGULATIONS:**

- A. Authority to Regulate; Procedure:
 - 1. The City Council may promulgate by resolution such additional rules and regulations concerning the care, use, operation and maintenance of the cemetery as it shall deem necessary.

 - 2. The Mayor may, from time to time as the City Council deems necessary, direct and publish a booklet of rules and regulations for the convenience of the purchasers of lots in the City cemetery. Such rules and regulations shall constitute a part of the terms and conditions under which owners and users may utilize the cemetery and shall form a supplement to this Chapter after they have been adopted as official by resolution of the City Council.

 - 3. Any changes in the rules and regulations shall be adopted by the City Council before such changes shall be official. (1977 Code § 8-237)

- B. Lots Sold: Every lot or single grave sold is subject to rules and regulations that have been or may be adopted. The rules and regulations shall be subject to such changes as are found necessary for the protection of lot owners, the remains of the dead and the preservation of the cemetery. (1977 Code § 8-227)

C. Traffic Control:

1. The provisions of the City traffic ordinances relative to the operation of vehicles and conduct of pedestrians shall be in effect in the cemetery, except as herein otherwise modified by this Chapter.

2. It shall be unlawful for any person to ride or drive within the City cemetery at a speed greater than ten (10) miles per hour. (1977 Code § 8-230)

D. Children: Children under the age of eight (8) years shall not be allowed in cemeteries unless accompanied by their parents or other adults, except for the purposes of attending authorized funerals or, in the company of adults, placing flowers on the grave of a deceased relative or friend, or performing any other customary evidence of respect in accordance with their religious principles. (1977 Code § 8-231)

E. Animals: No animal shall be allowed in any cemetery, except in the confines of a vehicle and must be at all times retained within the confines of said vehicle while the vehicle remains in the cemetery. (1977 Code § 8-232)

F. Decorum: Cemetery grounds are sacredly devoted to the interment and repose of the dead. Strict observance of decorum due to such a place shall be required of all persons. (1977 Code § 8-233)

G. Errors in Opening Graves: Under no circumstances will the City assume responsibilities for errors in opening graves when orders are given by telephone. (1977 Code § 8-229)

H. Religious and Fraternal Organizations: The City may contract with religious and fraternal organizations to designate a reasonable portion of the cemetery in which burials may be restricted to members of such religious and fraternal organizations and their families. (1977 Code § 8-226)

7-4-12: **CARE AND MAINTENANCE; RIGHT TO ENTER:** The City reserves the right to enter upon any grave and to perform all work necessary for the care and upkeep of all lots and graves in its cemetery. (1977 Code § 8-228)

7-4-13: **UNLAWFUL ACTS:**

A. Injury to Property:

1. It is a Class B misdemeanor, subject to penalty as provided in Section 1-4-1 of this Code, for any person to tie or attempt to tie any horse, animal or motor vehicle

to any monument, gravestone, tablet, marker, tree, shrub, fence or enclosure on the premises of the cemetery for the purpose of injuring, defacing or attempting the removal of same.

2. It shall be an infraction, subject to penalty as provided in Section 1-4-1 of this Code, for any person to injure, deface, break, destroy or remove any headstone, tombstone, monument, tree, shrub or any other property in the cemetery. (1977 Code § 8-234)

- B. Landscaping by Private Persons: Except as provided by the rules and regulations of the City Council, it shall be unlawful for any person to erect or maintain any fence, corner post, coping or boundary of any kind, to plant any vegetation upon any lot or lots, street, alley or walk in the cemetery or to grade the ground or land thereof. The Sexton shall, whenever required, furnish the true lines of any lots according to official survey, shall prevent and prohibit any markings or the same except by official landmarks, and shall prevent and prohibit any grading thereof that might destroy or interfere with the general slope of the land. (1977 Code § 8-235; 1998 Code)
- C. Placement of Markers: It shall be unlawful for any person to erect, place or cause to be placed any marker or monument on any lot in cemetery in violation of the rules and regulations promulgated by the City Council regarding the placement, construction, and design of all such markers. (1977 Code § 8-236)