

ORDINANCE NO. 592

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALISTOGA,
CALIFORNIA, ADDING TITLE 4 TO THE CALISTOGA MUNICIPAL CODE PERTAINING TO
THE REGULATION OF PIONEER CEMETERY**

WHEREAS, the City Council finds that the addition of Title 4 "Cemetery Regulations" to the Calistoga Municipal Code is consistent with the General Plan policies, which serve to protect the public health, safety and general welfare of the community; and

WHEREAS, this action is categorically exempt from the California Environmental Quality Act (CEQA) under Sections 15301 and 15323 of the CEQA Guidelines,

**NOW THEREFORE THE CITY COUNCIL OF THE CITY OF CALISTOGA DOES
HEREBY ORDAIN AS FOLLOWS:**

Section 1. Title 4 "Cemetery Regulations," attached hereto as Attachment A, is hereby added to the Calistoga Municipal Code

Section 2. This ordinance shall take effect thirty (30) days after its passage. Before expiration of fifteen (15) days after its passage by the City Council, the City Clerk shall cause to be published a summary of this ordinance in a newspaper of general circulation within the City of Calistoga.

Section 3. Severability. If any section or portion of this ordinance is for any reason held to be invalid by a court or competent jurisdiction, such invalidity shall not affect the other portions of this ordinance which can be given effect without the invalid provisions or application, and to this end the provisions of this ordinance are declared to be severable.

THE FOREGOING ORDINANCE was introduced with first reading waived at a regular meeting of the Calistoga City Council on the **6th day of May, 2003**, and was passed and adopted at a regular meeting of the Calistoga City Council on the **20th day of May, 2003**, by the following vote:

AYES: Councilmember Gingles, Vice Mayor von Pohle, Councilmember Slusser,
and Mayor Alexander

NOES: None


ABSTAIN: None

ABSENT: Councilmember Sterk



DR. ANDREW ALEXANDER, Mayor

Attest:



ROBERT HAYES, City Clerk

ORDINANCE 592 ATTACHMENT

CITY OF CALISTOGA

CEMETERY REGULATIONS

TITLE 4

4.01 DEFINITIONS

As used herein, terms shall have the following meanings:

"Burial Park" means a tract of land dedicated for use as a place of burial for human remains.

"Burial Permit" means a permit issued by the Cemetery Superintendent for the burial of human remains.

"Cemetery" means Pioneer Cemetery, a burial park located on Foothill Boulevard in the City of Calistoga.

"Cemetery Authority" means the City of Calistoga.

"Cemetery Superintendent" means the Director of Public Works of the City of Calistoga.

"Cremation" means incineration of human remains.

"Disinterment" means the removal of human remains from a grave.

"Grave" means an excavation in a burial park where human remains have been or will be buried.

"Interment" means the disposition of human remains by burial, entombment, or inurnment.

"Inurnment" means the placement of cremated human remains in an urn and burial of the urn.

"Memorial" means a monument, marker, tablet, headstone, or nameplate placed on or next to a grave.

"Monument" means a memorial of granite or other approved material that extends vertically above the surface of the ground.

“Permit for Disposition of Human Remains” means a permit (including a “burial permit”) issued pursuant to law, for the interment, disinterment, removal, reinterment or transportation of human remains.

“Plot,” “lot,” or “interment plot” means a distinct portion or piece of land in the Cemetery.

“Plot owner,” “owner,” or “lot proprietor,” means the record owner of a plot in the Cemetery

4.02 PURPOSE

This Title is adopted pursuant to California Health and Safety Code Section 8300 for the purpose of establishing regulations governing the use of lots in Pioneer Cemetery and conduct within the burial park. Cemetery lots must be used in accordance with the regulations set forth in this Title.

4.03 MANAGEMENT AND SUPERVISION

The management and supervision of the Cemetery shall be in the Department of Public Works.

4.04 RESTRICTIONS ON INTERMENTS

After the effective date of the ordinance adopting this Title of the Municipal Code, full casket burials will not be permitted in Pioneer Cemetery. Except in the event of a public health emergency necessitating expedited disposal of human remains, only inurnments will be permitted in the Cemetery.

4.05 RESTRICTIONS ON TRANSFERS

After the effective date of the ordinance adopting this Title of the Municipal Code, Cemetery lots may not be sold or transferred without the approval of the Cemetery Authority

4.06 PERMITS REQUIRED

A permit shall be required for all interments, disinterments, or any work at a plot, including but not limited to setting of markers, planting, structural improvements, excavations or earthwork. The fees for all permits throughout the Cemetery shall be established through schedules to be fixed from time to time by resolution of the Cemetery Authority. All fees are due at the time a permit is issued.

4.07 APPLICATIONS FOR PERMITS

Applications for permits must be submitted in writing on the form provided by the Cemetery Superintendent. The Cemetery Authority reserves the right to refuse any form of interment in any plot, and to refuse to open any grave for any purpose except by order of the Court.

The Cemetery Authority will accept permit applications only from plot owners or their authorized agents. Each applicant for a permit shall complete and submit with the application a form, provided by the Cemetery Superintendent, releasing the Cemetery Authority from liability for mistakes and errors in the administration of the Cemetery. No permit will be granted unless and until the applicant submits the completed release form.

4.08 APPEALS

Within ten (10) days after rejection of a permit application or the issuance of a permit with conditions, the applicant may appeal the rejection or the conditions by filing a written notice of appeal with the City Clerk. The appeal will be considered at the next regularly scheduled meeting of the City Council for which the notice and agenda requirements of the Ralph M. Brown Act (Government Code §§ 54950 et seq.) may be met. The decision of the City Council shall be final.

4.09 SCHEDULING OF SERVICES

The Cemetery Superintendent requires at least twenty-four (24) hours' notice prior to any interment, and at least one (1) week's notice prior to any disinterment or removal.

No interments will be allowed at the Cemetery on federal, state, or local holidays, or on weekends, without prior approval of the Cemetery Superintendent.

4.10 DELAYS IN INTERMENTS CAUSED BY PROTESTS

The Cemetery Authority shall not be liable for any delay in services if a protest to the interment has been made or if the person or entity requesting an interment has not complied with all Cemetery rules and regulations. The Cemetery Authority is under no duty to recognize any protests of interment unless they are in writing and filed with the Cemetery Superintendent.

4.11 NOT RESPONSIBLE FOR STATE PERMITS OR FOR VERIFYING IDENTITY

The Cemetery Authority shall not be responsible for issuing or verifying any permits required under state or federal law, nor for verifying the identity of the person to be interred.

4.12 AUTHORITY HELD HARMLESS

The Cemetery Authority shall be held harmless from all liability for mistakes or errors in the administration of Pioneer Cemetery. All applicants for permits to perform interments, disinterments, or any work on a plot shall be required to provide the Cemetery Authority with a written release from liability.

4.13 BURIALS

Plots in the Cemetery are conveyed for burial purposes, subject to such rules and regulations as are now or hereinafter may be imposed by an ordinance of the Cemetery Authority.

4.14 ELIGIBILITY FOR BURIAL

No person is eligible for burial in the Cemetery unless he or she owns, or is related by blood or marriage to a person who owns, a plot in the Cemetery, or he or she is eligible through a religious, fraternal, or other organization that owns a plot in the Cemetery. The determination of eligibility for burial in a plot owned by a religious, fraternal or other organization shall be made by the plot owner.

4.15 INTERMENTS

Not more than one (1) interment shall be permitted in any grave, except pursuant to the plot owner's written consent as filed with the Cemetery Superintendent. The Cemetery Superintendent may permit two (2) burials in one (1) grave whenever he or she deems it is proper, provided a written request is filed with the Cemetery Superintendent

4.16 LOCATION OF GRAVES

If there are existing graves in a plot owned by an individual, no further interments will be made in that plot unless the plot owner identifies the existing grave(s) and provides the location of the proposed interment to the Cemetery Superintendent. When instructions regarding the location of an existing grave in a plot are unavailable or indefinite, or when, for any reason, an excavation cannot be made where specified, the Cemetery Superintendent may, in his or her discretion, require that the excavation be made in such location in the plot as he or she shall deem best and proper. The Cemetery shall not be liable for damages for any error in locating available interment space within a plot.

4.17 INTERMENT IN PLOT OWNED BY AN ORGANIZATION

Where a plot is owned by a religious, fraternal, or other organization, the plot owner shall determine eligibility for burial in the plot. The Cemetery Authority shall accept applications for permits only from the plot owner.

4.18 LICENSED ENTITIES

Interment or disinterment may be performed only by an entity duly licensed by the State of California for interment or disinterment of human remains pursuant to California Business and Professions Code Section 7606.

4.19 REQUIREMENTS FOR BURIALS

- (a) Except as provided in subdivisions (b) and (c), there shall be no less than eighteen (18) inches of dirt or turf on top of all vaults or urns as measured at the time of burial.
- (b) Cremated remains placed in an urn or urn vault and covered with at least three-quarters of an inch of concrete, brass, granite, marble, or metal plate affixed to the urn or urn vault shall be exempt from the requirement of subdivision (a).
- (c) In the case of consensual double burials, the urn or vault that is on top shall be covered with at least twelve (12) inches of dirt or turf as measured at the time of burial.
- (d) In a case of extreme hardship, upon request of the next of kin or other person responsible for making the burial arrangements for the deceased, a burial of an urn of less than eighteen (18), but not less than twelve (12) inches may be provided.

The Cemetery Superintendent may place additional conditions on any burial permit.

4.20 DISINTERMENTS

No disinterment will be permitted without the consent of the person or entity owning the plot from which the disinterment is to be made except:

- (a) By order of the Court or the City of Calistoga in compliance with state law and the rules and regulations of the California Department of Health Services.
- (b) Any disinterment shall be performed in accordance with all Cemetery rules and regulations and by a licensed entity as provided in Section 4.18 of this Chapter.
- (c) The City shall not be liable for any damage incurred to any disinterred casket or urn.

4.21 INTERMENT RIGHTS

All plots conveyed shall be presumed to be the sole and separate property of the person(s) named as grantee(s) in the instrument of conveyance, provided however that the spouse of any named grantee shall have a vested right of interment of his or her remains in any plot conveyed to his or her spouse, which right shall continue for the duration of the marriage. No conveyance, or other action, shall divest a spouse of a vested right of interment, provided however that a final decree of divorce shall terminate the interment right of the plot owner's spouse unless the decree of divorce provides for the right of interment to continue.

In all conveyances to two (2) or more persons as joint tenants, each joint tenant shall have a vested right of interment of his or her remains in the plot. Upon the death of a joint tenant, the title to the plot immediately vests in the survivor(s), subject to the vested right of interment of the deceased joint tenant owner.

A vested right of interment may be waived and shall terminate upon the interment elsewhere of the remains of a person holding an interment right.

An affidavit by a person with personal knowledge setting forth the fact of death of the plot owner and the name of the person(s) entitled to interment in the plot is complete authorization to the Cemetery Superintendent to permit interment of the person(s) so entitled in the unoccupied portions of the plot.

An affidavit by any person with personal knowledge setting forth the fact of the death of one joint tenant and establishing the identity of the surviving joint tenant(s) named in the deed to the plot, when filed with the Cemetery Superintendent, is complete authorization to the Cemetery Superintendent to permit the interment in the unoccupied portion of the plot in accordance with the directions of the surviving joint tenant(s) or their successors in interest.

When there are several owners of a plot, or holders of rights of interment in a plot, they may file written notice with the Cemetery Superintendent that they have designated one or more persons as their representative(s). In the absence of such notice or of written protest to an interment, the Cemetery Authority is not liable to any plot owner or holder of interment rights for permitting an interment in the plot upon the request or direction of any holder of rights of interment in the plot.

No vested right of interment gives to any person the right to have his or her remains interred in any plot in which the remains of any person having a prior vested right of interment may have been interred, nor does it give any person the right to have the remains of more than one person interred in a single grave in violation of the Cemetery's rules and regulations.

4.22 FAMILY PLOT HELD INALIENABLE

If a plot owned by an individual is used for the interment of that individual's remains or the remains of a member of his or her family by birth or marriage, and the plot owner dies without making disposition of the plot either by specific devise in a will, or by a written declaration filed and recorded in the office of the Cemetery Superintendent, the plot thereby becomes inalienable and shall be held as the family plot of the record owner.

In a family plot, one grave may be used for the plot owner's remains, one for the remains of the owner's surviving spouse, if any, and any remaining space within the plot may be used to inter the heirs of the deceased plot owner without consent of any person claiming any interest in the plot.

Any surviving spouse, parent, child or heir who has a right of interment in a family plot may submit to the Cemetery Superintendent a written waiver of such right in favor of any other relative of the deceased plot owner or of his or her spouse, and upon such waiver the remains of the person in whose favor the waiver is made may be interred in the plot.

The Cemetery Authority may take and hold any plot conveyed or devised to it by the plot owner so that it will be inalienable, and interments shall be restricted to the persons designated in the conveyance or devise.

4.23 AUTHORIZATION OF ONE PLOT OWNER SUFFICIENT

The Cemetery Authority reserves the right to permit an interment upon receiving written authorization of any plot owner, even if plots are owned by more than one person.

4.24 URN NOT TO BE DISTURBED

Once an urn containing human remains is within the confines of the Cemetery, no one shall be permitted to open the urn without the consent of the deceased's legal representative.

4.25 REGULATIONS OF IMPROVEMENT

The manner of improvement and embellishment of burial plots shall be subject to the approval and regulation of the Cemetery Superintendent who shall make such regulation as shall tend to the greatest degree of permanence and protection, and give to the grounds and buildings an appearance of harmony and design as far as is possible under existing conditions and consistent with the purpose to which they are intended and dedicated.

4.26 GRAVE IDENTIFICATION

Permits issued by the Cemetery Superintendent are required for all grave markers, monuments, and headstones. All markers, monuments, headstones, and foundations for monuments shall conform to permit conditions.

The Cemetery Authority reserves the right to prohibit the erection of any vault, monument, headstone or marker considered by the Cemetery Superintendent inappropriate, either in size, material, design, workmanship, or location on the grave, burial plot, lot, block or section.

4.27 VAULTS

Vaults wholly or in part above the ground will not be allowed.

4.28 COPINGS, TRELISES, ARCHES, WOODEN MARKERS

Coping, curbing, or enclosure of any kind around lots or graves that becomes unsightly, in disrepair, or hazardous may be removed by order of the Cemetery Superintendent.

4.29 TREES AND SHRUBS

Trees and shrubs shall be planted only by permission of the Cemetery Superintendent. If any tree or shrub becomes hazardous in the opinion of the Cemetery Superintendent or interferes with the general design of the Cemetery, the Cemetery Superintendent shall have the right to remove such tree or shrub, or any part thereof.

4.30 GRADE

The Cemetery Superintendent shall determine the grade of all plots and reserves the right to change the grade of any plot as he or she deems necessary.

4.31 RIGHT TO REPLAT, REGRADE AND USE PROPERTY

The Cemetery Authority reserves the right to enlarge, reduce, replat or change the boundaries or grading of any section or part of the Cemetery; to modify, relocate, improve, or regrade roads, drives or walks, or any part thereof; to lay, maintain and operate, alter, or change pipe lines, gutters, sprinkling systems, and drainage facilities; to use Cemetery property not held by individual plot owners for any and all cemetery purposes, including the interring and preparing for interment of human remains, or for any activity necessary, incidental, or convenient thereto. The Cemetery Authority reserves to itself, and to those lawfully entitled thereto, a perpetual right of ingress and egress over plots for the purpose of passage to and from other plots.

4.32 RESERVATION OF ROADS, WALKWAYS, AND ALLEYWAYS

No easement or right of interment is granted to any plot owner in any road, avenue, drive, alley or walk within the Cemetery. Any road, drive, alley or walk within the Cemetery may be used as a means of access to the burial grounds or buildings for so long as the Cemetery Authority devotes it to that purpose.

4.33 FLOWER RECEPTACLES AND FLOWERS

The Cemetery Superintendent shall have the authority to remove all floral designs and flowers from any lot or grave within three (3) days after they have been placed thereon, or as soon as, in the judgment of the Cemetery Superintendent, they become unsightly. The Cemetery Authority shall not be liable for floral pieces, baskets, or frames to which such floral pieces are attached. The Cemetery Authority shall not be liable for lost, misplaced, or broken flower vases or containers. The Cemetery Authority reserves the right to regulate the method of decorating plots in order to maintain design harmony consistent with the purpose to which the Cemetery is dedicated. No flowers, bushes, trees, or shrubs may be planted anywhere within the Cemetery without the express written consent of the Cemetery Superintendent.

4.34 DISCLAIMER OF RESPONSIBILITY FOR PROPERTY DAMAGE

The Cemetery Authority shall take reasonable precaution to protect plots, monuments, markers, copings, enclosures, and all plot improvements from loss or damage; but it disclaims all responsibility for loss or damage from causes beyond its reasonable control, particularly from damage caused by the elements, acts of God, acts of terrorism, thieves, vandals, strikers, malicious mischief makers, explosions, unavoidable accidents, invasions, insurrection, riots, or the actions of any military or civil authority, whether the damage be direct or collateral, other than as herein provided.

4.35 RUBBISH

Trash, including faded flowers, must be deposited in the receptacles placed throughout the Cemetery for such purpose.

4.36 CONDUCT OF PERSONS WITHIN THE CEMETERY

Persons within the Cemetery grounds must walk or ride only on the designated roads, avenues, drives, alleys and walkways. Only the plot owner and those authorized by the plot owner shall be permitted on any plot. Any other person thereon shall be considered a trespasser and the Cemetery Authority shall owe no duty to said trespasser to keep the property or the memorial thereon in a reasonably safe condition.

Children shall not be admitted to the Cemetery unless accompanied by an adult who will be responsible for their conduct.

Food and drink are not allowed upon the grounds.

No person(s) with firearms, excepting peace officers, shall be permitted to enter the grounds except upon attendance at a military funeral or with the permission of the Cemetery Superintendent.

All persons are prohibited from gathering flowers, either wild or cultivated, or breaking trees, shrubbery or plants, or feeding or disturbing the birds or other wild life.

It is of the utmost importance that there should be strict observance of all the proprieties of the Cemetery, whether embraced in these rules or not, and no improprieties will be allowed.

4.37 ANIMALS

No pets or domesticated animals of any kind, except those trained as assistants to persons with disabilities, are permitted on the Cemetery grounds.

4.38 VEHICLES

No vehicles are allowed in the Cemetery except by permit.

4.39 SOLICITING OR ADVERTISING

No soliciting for monumental or any other kind of work on the Cemetery grounds shall be allowed, and it shall be unlawful to distribute, place, or permit any advertising on the Cemetery grounds.

4.40 LOT OWNERS SUBJECT TO RULES

All lot owners and holders are subject to the conditions, rules and regulations now in force or which may be enacted by the Cemetery Authority.

4.41 HOURS

The Cemetery shall be closed one half hour after sunset until one half hour after sunrise. It is unlawful and a misdemeanor for anyone to remain or be present in the Cemetery when such Cemetery is closed.

4.42 TRESPASSING OR LOITERING PROHIBITED

It shall be unlawful to trespass or loiter without lawful business in the Cemetery. The penalty for violating this section shall be a fine of not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000), or a jail sentence of up to six months, or both. Each person shall be guilty of a separate offense for each and every day during any portion of which any violation of this section is committed, continued or permitted. (Ord. 443 § 1, 1989; Ord. 360 § 2, 1980; prior code § 1.6-1)