

Agenda Item No. 5.1

Ordinance No. 12-1286, For the Purpose of Repealing and
Replacing Metro Code Title X, Chapter 10.04 Pioneer
Cemeteries.

Ordinances – Second Read

Metro Council Meeting
Thursday, Oct. 4, 2012
Metro, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF REPEALING AND) ORDINANCE NO. 12-1286
REPLACING METRO CODE TITLE X,)
CHAPTER 10.04 PIONEER CEMETERIES) Introduced by Martha Bennett, Chief
) Operating Officer, with the concurrence of
) Council President Tom Hughes

WHEREAS, in 1994, Multnomah County transferred to Metro certain parks, boat ramps, a golf course, natural areas and the perpetual care of 14 pioneer cemeteries; and

WHEREAS, Metro Code Chapter 10.01, establishing Metro Regional Parks and Greenspaces Regulations, and 10.02 establishing Regional Park Fees, were adopted in 1996 to govern the new Metro Regional Parks Department created to administer said facilities; and

WHEREAS, Metro Code Chapter 10.04 was adopted in 2004, to provide for the management and operation of the Metro Pioneer Cemeteries; and

WHEREAS, Metro’s regional role in the provision of cemetery services has progressed and improved since that time; and

WHEREAS, Metro Code Title X requires updating to account for this progression, and to appropriately govern the Metro Pioneer Cemeteries; and

WHEREAS, the revisions proposed for Metro Code Chapter 10.04 “Pioneer Cemetery Properties” will more effectively ensure that Metro’s Pioneer Cemeteries are managed in compliance with state law, are operated to maximize financial benefit and long term stability, are maintained as a community asset, and are appropriately protected and preserved in keeping with their historically significant nature; and

WHEREAS, Ordinance No. 12-1286 will amend Metro Code Chapter 10.04, now therefore

THE METRO COUNCIL ORDAINS AS FOLLOWS:

- 1. Metro Code Chapter 10.04 is repealed and replaced as set forth in Exhibit A to this Ordinance.

ADOPTED by the Metro Council this _____ day of September, 2012.

Tom Hughes, Council President

Attest:

Approved as to Form:

Kelsey Newell, Regional Engagement
Coordinator

Alison Kean Campbell, Metro Attorney

EXHIBIT A

CHAPTER 10.04

PIONEER CEMETERY PROPERTIES

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10.04.160	Monuments and Memorials Restricted
10.04.170	Marker, Monument, Memorial Repair Restricted

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- 10.04.185 Cemetery Errors and Irregularities
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10.04.010 Purpose

The purpose of this chapter is to provide regulations controlling the operation of Metro owned and operated Pioneer Cemeteries and governing the use of these Cemeteries by members of the public in order to protect and preserve the Pioneer Cemeteries, the Graves and the Remains of those interred therein.

10.04.020 Policy

The Metro Council has determined that it is necessary to adopt these code provisions in order to ensure the long-term stability of Metro's cemetery operations, which shall be achieved by Cemeteries being operated as follows:

- (a) In compliance with applicable state laws;
- (b) As community assets;
- (c) In a manner that will maximize public financial benefit and long-term stability; and
- (d) To protect and preserve their historically significant nature.

All four above objectives are to be considered equally important in the management of Metro's Pioneer Cemeteries.

10.04.030 Definitions

For the purposes of this chapter unless the context requires otherwise, the following terms shall have the meanings indicated:

(a) "Advance Sale" means the sale and purchase of an Interment Right to a predetermined Grave in advance of use for any person to whom the owner designates for Burial in the predetermined Grave.

(b) "At-Need" means at the time of death sale of Graves/plots, services, memorials and materials which are to be delivered immediately or upon delivery to the Cemetery for immediate Interment. Graves/plots are At-Need items due to their purchase being an immediate addition of an asset to one's estate.

(c) "Burial" means the placement of Human Remains in a Grave, in accord with state law and regulations.

(d) "Burial Services" means the opening and closing of the Grave in accord with state law and regulations, including excavation and fill, the provision and placement of a concrete liner or vault and any overtime charges that apply.

(e) "Cemetery," "Pioneer Cemeteries," and "Cemeteries" means those certain parcel(s) of real property set forth in section 10.04.030, designated, owned and operated by Metro for the disposition of Human Remains by any one or the combination of more than one of the following:

- A Burial place for ground or earth Interments, either casket or cremation.
- A mausoleum or crypt Interments.
- A columbarium or Interment of Cremated Remains.

(f) "Certificate of Interment/Inurnment Rights" or "Certificate" is a perpetual right to use property for burial purposes. The fee title of the property is without possession of any estate or interest in the land and all rights of ownership therein remain with Metro.

(g) "Cremated Remains" means the remains of a cremated human body after the completion of the cremation process.

(h) "Contract of Purchase" or "Contract" is an agreement between Metro and the purchaser of Burial Services or an Interment/Inurnment Right to a Grave space or Niche.

(i) "Disinterment" is the removal of Human Remains from a Grave space as defined in ORS 97.220.

(j) "Family Plot" means a group of contiguous Graves sold for the purpose of the Interment or Inurnment of related individuals as set forth and governed by ORS 97.560-650.

(k) "Grave" means a space of ground in a Cemetery used or intended to be used for Interment or Inurnment.

(l) "Human Remains" or "Remains" are the body of a deceased person in any stage of decomposition.

(m) "Interment" is the disposition of Human Remains by entombment or Burial in a place used or intended to be used and dedicated for Cemetery purposes.

(n) "Inurnment" is the placement of cremated Human Remains by entombment or Burial in a place used or intended to be used and dedicated for Cemetery purposes.

(o) "Marker" means a flat Grave tablet or headstone placed flush to the ground, identifying a Grave or Graves.

(p) "Memorial" means a nameplate or inscription identifying a crypt or Niche, or any other improvement or permanent structure intended to identify the location of a Grave or Graves other than a Marker or a Monument.

(q) "Monument" means an upright or vertical headstone or tombstone identifying a Grave or Graves.

(r) "Niche" means a space in a structure to place cremated Human Remains of one or more persons.

(s) "Outer Burial Container" is a concrete or composite material container which is buried in the ground to provide outer protection and into which Human Remains or Cremated Remains are placed for Burial purposes.

(t) "Perpetual Care Fund" is a special account set aside for holding of funds used for the required perpetual maintenance of the Cemetery grounds.

10.04.040 Description of Pioneer Cemeteries

The areas dedicated for Interment purposes by Metro shall consist of the following Cemeteries:

(a) Brainard Cemetery located at NE 90th Ave. and NE Glisan St., Portland

(b) Columbia Pioneer Cemetery located at NE Sandy Blvd. and NE 99th Ave., Portland

(c) Douglass Pioneer Cemetery located at Hensley Road and SE 262nd Avenue, Troutdale

(d) Escobar Cemetery located at SW Walters Road and Littlepage Road, Gresham

(e) Gresham Pioneer Cemetery located at SW Walters Road, Gresham

(f) Grand Army of the Republic Cemetery located at SW Boones Ferry Road and Palatine Road, Portland

(g) Jones Cemetery located at SW Hewitt Blvd. and SW Humphrey Blvd., Portland

(h) Lone Fir Cemetery located at SE 26st Ave. and SE Stark St., Portland

(i) Mt. View-Corbett Cemetery located at Smith Road and Evans Road, Corbett

(j) Mt. View-Stark Cemetery located at SE Stark Street and SE 257th Street, Gresham

(k) Multnomah Park Cemetery located at SE 82nd Ave. and SE Holgate Blvd., Portland

(l) Pleasant Home Cemetery located at Bluff Road and Pleasant Home Road, Gresham

(m) Powell Grove Cemetery located at NE Sandy Blvd. and NE 122nd Ave., Portland

(n) White Birch Cemetery located at SW Walters Road, Gresham

10.04.050 Operation and Administration

Metro Cemeteries shall be operated and maintained in accordance with Metro Code Title 10.01 and this chapter.

10.04.055 Enforcement Authority

(a) The Chief Operating Officer or designee shall have the authority to enforce all of the provisions of this chapter, including but not limited to the authority to enforce any rules and regulations established pursuant to this chapter.

(b) The Chief Operating Officer or designee shall have the authority to establish rules and regulations governing the Pioneer Cemeteries consistent with the provisions of this chapter, including but not limited to rules governing Interment, Inurnment, and fees. Said rules shall be in writing, shall be posted on Metro's website and shall be filed with the Metro Council.

(c) No person shall violate any rule or regulation which has been established by the Chief Operating Officer pursuant to this chapter. Said violation shall be subject to enforcement and penalties as set forth in Chapters 10.01.400 and 10.01.600.

(d) The acts of Metro elected officials, employees, volunteers, interns, contractors and other agents constituting official duties, and other acts officially authorized by Metro by agreement, special use permit, or otherwise in writing shall not be deemed to violate this chapter or rules established pursuant hereto.

10.04.060 Cemetery Hours of Operation

(a) Metro's Cemeteries are open from 7:00am to legal sunset. Hours of operation will be posted at each Cemetery.

(b) Entering or remaining in a Cemetery outside of normal operating hours without obtaining prior authorization from Metro is a violation subject to Ejectment and Exclusion from the Cemetery as set forth in Chapter 10.01.400 and/or the Penalties set forth in Chapter 10.01.600.

(c) Interments and Inurnments shall take place between the hours of 8:00 am and 3:30 pm daily, with the exception of Saturdays, Sundays and legal holidays. Interments and Inurnments may be made outside of these hours at the discretion of the Chief Operating Officer, for an additional fee.

10.04.065 Other Uses

Uses other than Interment/Inurnment, Grave visitation, passive recreation, and historical research are prohibited unless specifically provided by Special Use Permit issued pursuant to Metro Chapter 10.01.360.

10.04.070 Sale of Interment/Inurnment Rights and Burial Services

(a) Interment/Inurnment Rights to a Grave may be sold by Metro both in advance (Advance-Sale) or At-Need, by Contract of Purchase. Purchasers shall pay the full fee for Interment/Inurnment Rights on the date of sale. Upon payment, Metro shall issue the purchaser a Certificate of Interment/Inurnment Rights.

(b) Burial Services and goods shall be sold At-Need through a Contract of Purchase.

(c) Fees and charges for Burial Services and goods must be fully paid before Interment/Inurnment will be permitted.

(d) Metro shall retain ownership and control of all Graves or Niches sold, subject to the terms of the Certificate of Interment/Inurnment Rights.

10.04.080 Multi-Interment/Inurnment Right Sales Restricted

(a) Except as set forth in this chapter 10.04.080(b and c), the sale by Metro of a group of Interment/Inurnment Right Certificates is prohibited.

(b) A group of contiguous Interment/Inurnment Right Certificates for contiguous Graves may be sold to one family or individual for the purposes of creating a Family Plot.

(c) A group of Interment/Inurnment Right Certificates other than a Family Plot may be sold upon the adoption of a resolution by the Metro Council approving an agreement establishing terms, including the rates and terms of resale. A one-time administrative fee set at the discretion of the Chief Operating Officer or designee shall be charged in addition to regular fees and rates.

10.04.090 Transfer of Certificate of Interment and Inurnment Rights

(a) Interment/Inurnment Rights, whether conveyed by the Pioneer Cemeteries to the recipient by Deed, Certificate or other means, cannot be sold, transferred, bartered, exchanged or assigned (hereafter "Transfer(red)") to any other person or entity without the prior written consent of the Chief Operating Officer or designee, in accordance with Oregon Revised Statutes Chapter 97 and as set forth in section 10.04.070.

(b) In the event an owner of an Interment/Inurnment Right seeks permission from Metro to Transfer an Interment/Inurnment Right, Metro shall have the first right to buy back said Interment/Inurnment Right from the owner for the price paid when the Interment/Inurnment Right was originally sold.

(c) No attempted Transfer of an Interment/Inurnment Right shall be complete or effective unless it has been approved by Metro and recorded in the Metro Cemetery records.

(d) A one-time administrative fee set at the discretion of the Chief Operating Officer or designee shall be charged for all Transfers.

(e) The above set forth notwithstanding, the Transfer Interment/Inurnment Rights within Family Plots to family members in accord with Oregon Revised Statute Chapter 97 is permitted without fee or other charge.

(f) Except as set forth in written agreements entered into by Metro prior to the effective date of this ordinance, the sale of Interment/Inurnment Rights by purchasers to third parties for more than the current rate charged by Metro is prohibited.

10.04.100 Full Body Grave Dimensions - Burial Limits

A single Grave shall measure 40 inches by 9 feet and may contain up to one (1) casket and six (6) urns, unless otherwise authorized at the sole discretion of the Chief Operating Officer or designee and/or the rules adopted pursuant to this chapter.

10.04.110 Outer Burial Containers Required

Metro approved Outer Burial Containers are required for all Interments/Inurnments in Metro Cemeteries.

10.04.120 Disinterment

(a) Unless ordered by the State Medical Examiner or a court having jurisdiction over Metro Cemeteries, Remains interred in a Grave at any Metro Cemetery shall only be disinterred upon the written consent of the Chief Operating Officer or designee and the person having the right to control the disposition of said Remains and in accordance with applicable state law.

(b) If Disinterment is needed by Metro and consent of the person having the right to control the disposition of said Remains cannot be obtained or such person cannot be located, the Chief Operating Officer or designee may apply to the Multnomah County Circuit Court for permission to disinter. Said application shall be submitted only after notice of application to the Metro Council.

10.04.130 Flowers Funerary Decorations Restricted

All flowers, funerary decorations and plants on Graves in violation of this section, and/or that conflict with normal grounds maintenance, will be forfeited, removed and disposed without notice.

(a) All flowers, funerary easels and decorations placed on a Grave at the time of a funeral and not removed within three weeks after the Interment are subject to removal and disposal by Metro.

(b) All flags, flowers and plants placed on Graves on Memorial Day and not removed within three weeks after the Interment are subject to removal and disposal by Metro.

(c) Artificial flowers and plants are prohibited between March 1st and November 15th of each year, except for a period of three weeks after Memorial Day observance.

(d) All flowers, funerary easels and decorations will be subject to removal and disposal by Metro when they become withered, faded or otherwise unsightly, in Metro's sole discretion.

10.04.135 Personal Effects and Mementos Prohibited

(a) Personal property, including but not limited to, sacred objects, photographs, toys, clothing, glassware, banners, pin-wheels, chimes, balloons or staked items, left in the Cemetery or placed on or near a Grave is prohibited, except as otherwise permitted in writing by Metro at the discretion of the Chief Operating Officer or designee. Said personal property will be forfeited, removed by the Cemeteries staff and disposed without notice or other process.

10.03.140 Planting On or Around Graves Prohibited

Planting of trees, shrubs or any other plant material, except turf grass, on Graves or their borders is prohibited, unless approved in writing.

10.04.145 Grave Improvements Prohibited

Grave improvements other than Metro approved Markers, Monuments and Memorials are prohibited. The placement or installation by any person of temporary or permanent improvements covering, bordering or indicating the boundaries of Graves, including but not limited to posts and fences of any kind, walls, coping or curbs of concrete brick, stone or marble, is a violation of this chapter subject to the penalties set forth in Chapter 10.01.600. Memorials and improvements so placed or installed shall be deemed forfeited and shall be removed by the Cemeteries staff and disposed without notice.

10.04.150 Markers

(a) Grave Markers shall be limited to no more than one per Grave, installed at the head of the Grave. Persons installing a Grave Marker must submit an Installation Authorization Form to Metro depicting and describing the Marker and providing proof that said person is authorized to perform installation by the owner(s) of the Interment/Inurnment Right described on the Certificate of Interment and the person with legal right of disposition of the Remains.

(b) No person shall place any permanent Marker made of a material other than natural stone or bronze metal in a Metro Cemetery.

(c) No person shall place any permanent Marker in a Metro Cemetery unless properly supported with a foundation/collar made of concrete three (3) inches in width, flush with the ground, having no beveled edges. Each foundation/collar must be marked with the Grave, lot and block number of the Cemetery in which it is placed.

Markers and Marker bases shall not exceed the width of the Grave and shall be no larger than the following dimensions:

- i. Single Grave 18" x 30"
- ii. Companion Graves 18" x 60"

(d) The installation of any improvement to a Grave other than a Marker is prohibited unless otherwise approved as set forth in section 10.04.160.

10.04.160 Monuments and Memorials Restricted

(a) Monuments and Memorials are generally prohibited, but may be allowed at the discretion of the Chief Operating Officer or designee or as permitted by rules established pursuant to this chapter.

(b) Monuments and Memorials permitted under this section must comply with the requirements for Markers set forth in Section 10.04.150(a)-(c), and are subject to an additional fee. The owner(s) of the Interment/Inurnment Right and/or the person with legal right of disposition must enter into an Agreement with Metro providing permission to install the Monument or Memorial and releasing Metro from liability for any and all damage or destruction of the Monument or Memorial that may occur.

10.04.170 Marker, Monument, Memorial Repair Restricted

No repairs, restoration or improvements to any Marker, Monument or Memorial is permitted unless performed strictly under the written terms of approval issued by the Chief Operating Officer or designee. Violations of this section are also violations of section 10.04.180.

10.04.180 Removal of Marker, Monument, Memorials Prohibited

The removal of any Marker, Monument, Memorial or improvement is prohibited unless approved in writing by the Chief Operating

Officer or designee. It shall be a violation of this chapter for anyone to intentionally damage, alter, or deface any such property.

10.04.185 Cemetery Errors and Irregularities

(a) The Chief Operating Officer or designee may preclude an Interment/Inurnment in a Cemetery based on a determination that the ownership of the right of Interment/Inurnment, the location of the Grave, or the ability to open said Grave without intruding upon nearby occupied Graves is in doubt.

(b) When an Interment/Inurnment is precluded by the Chief Operating Officer under subsection (a), or if for any other reason an Interment/Inurnment space cannot be opened, Metro may elect to direct Interment/Inurnment of Remains in an available Grave in such location in the Cemetery as is deemed reasonably appropriate and reasonably equivalent in value at the sole discretion of the Chief Operating Officer or designee.

(c) The Chief Operating Officer or designee may correct any errors made by Metro in the description or transfer of Interment/Inurnment Rights, or by its agents in performing Interments/Inurnments, Disinterment or removals, when determined to be necessary in his/her sole discretion. The Chief Operating Officer or designee may void the erroneous grant of any Interment/Inurnment Certificate and provide a refund of the purchase price, or substitute in lieu thereof an Interment/Inurnment Certificate for a Grave selected by Metro within the same Cemetery of equal value and reasonably similar location if possible. In the event such error involves the Interment/Inurnment of the remains of any person, The Chief Operating Officer or designee may, at his/her sole discretion, elect to disinter said remains in accord with state law and reinter them in another available Grave within the same Cemetery, of equal value and reasonably similar location as may be substituted and conveyed as set forth the above.

10.04.190 Rates and Fees for Interment and Inurnment Rights, Burial Services and Perpetual Care Fund

(a) The Chief Operating Officer or designee shall establish rates for the Perpetual Care Fund, sale of Interment/Inurnment Rights for Graves and Niches and shall set fees and charges for Pioneer Cemetery goods and services, including Burial and other

required or optional services. Said rates, fees and charges shall be designed to recover all costs of operating the Cemeteries and may be adjusted from time to time without notice, to reflect market rates and to ensure the solvency and financial stability of the Cemeteries.

(b) Interment/Inurnment Right purchasers shall pay the rate, fees and charges on the date of purchase. Except as otherwise set forth in this chapter, no option to purchase rights or other prospective rights to Interment in the Pioneer Cemeteries shall be granted unless approved by resolution of the Metro Council setting forth the terms and conditions of said option or prospective right. Prices, fees and charges for services may vary among Cemeteries, as determined by the Chief Operating Officer.

(c) The Chief Operating Officer or designee may reduce rates, fees and charges for Grave sales and Burial Services in situations of extreme financial hardship or in cases of Wards of the State. All reductions or waivers shall be applied by written order setting forth the facts justifying the waiver or exemption.

10.04.220 Historical Research Requests

Due to the confidentiality and sensitive nature of Cemetery records, Metro will not distribute personal or contact information regarding any Interment/Inurnment Rights performed within the last 50 years from date of inquiry without proof of lineage, except as required by Oregon public records laws.

10.04.230 Other Laws Applicable

This chapter shall in no way be a substitute for or eliminate the necessity of conforming with any and all state laws and rules and other ordinances which are now or may be in the future in effect which relate to the activities regulated in this chapter.

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 12-1286, FOR THE PURPOSE OF AMENDING METRO CODE TITLE X, CHAPTER 10.04 PIONEER CEMETERIES

Date: September 4, 2012

Prepared by: Rachel Fox

BACKGROUND

When the Multnomah County Parks Department merged with Metro in 1994, Metro assumed responsibility for the operation of parks, boat ramps, a golf course, natural areas and the perpetual care of 14 pioneer cemeteries. Metro then established code provisions, (Chapter 10), for the consistent management of these properties. Metro Code Chapter 10 provides rules governing the use and operation of Metro's Cemeteries. The Code is being amended to update provisions relating to pioneer cemeteries administration.

The proposed revisions include language in how the cemeteries are organized within Metro and who has authority to govern the operations of these properties.

Presently, Metro Code 10.04, governing Pioneer Cemetery operations requires updating to align with industry standards and cemetery management protocols. The regulations proposed in this ordinance will ensure that the Pioneer Cemeteries are managed in compliance with state law, are operated to maximize financial benefit and long term stability, are maintained as a community asset, and are appropriately protected and preserved in keeping with their historically significant nature. The ordinance vests authority to manage and operate these cemeteries in the Chief Operating Officer, who may adjust fees and surcharges and who must establish rules consistent with the cemetery industry. The update to Chapter 10.04 addresses administration and maintenance policies that clarify Metro's Code for topics such as: transferring Certificates of Interment Rights between parties; multi-interment right purchases; the placement of different types and shapes of monuments, markers and memorials; installation of fences, blocks and bricks to enclose graves; and the placement of flowers, funerary decorations, trees and shrubs on graves within Metro's cemeteries.

Working with the Office of the Metro Attorney, and independent cemetery consultants, staff has researched and reviewed ordinances and policies of other cemetery operators in the metropolitan region and in some cases in the nation. This research was conducted in order to provide for a clear, comprehensive and forward thinking policy for the consistent management of these properties into the future.

ANALYSIS/INFORMATION

1. Known Opposition

No known opposition.

2. Legal Antecedents

The Metro Council passed Metro Code Title X, Chapter 10.01, establishing Metro Regional Parks and Greenspaces Regulations, in 1996. Subsequent Metro Code Chapter 10 regulations include Chapter 10.02 "Regional Park Fees" and Chapter 10.03 "Conservation Easements." Oregon Revised Statutes 97.010 – 97.992 provide basic guidelines on the establishment and operation of cemeteries in the State of Oregon. Resolution 04-1038 establishing Chapter 10.04 "Pioneer Cemetery Properties" that provides for the

operation, management and maintenance of Metro's Pioneer Cemeteries in a fashion equivalent to other cemeteries in the region and state, while recognizing and preserving their unique and valuable heritage. The ordinance also repealed Metro Code Section 10.02.050 "Fees for Memorials and Cemeteries" and grants the Chief Operating Officer the authority to establish and enforce cemetery rules and set rates for graves and memorials.

3. Anticipated Effects

These changes will organize the Metro Code's provisions for the cemeteries in a more clear and direct manner consistent with other cemetery operators that also relate to best practices within the industry.

4. Budget Impacts

No budgetary impacts are anticipated from this ordinance.

RECOMMENDED ACTION

Metro Council vote in favor for the code revisions and recommends adoption of Ordinance No. 12-1286.