

# HILL TOP CEMETERY RULES AND REGULATIONS



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## 1.0 Introduction

These Rules and Regulations for the Hill Top Cemetery are adopted for the mutual protection of all burial plot and lot Owners and the Town of Pagosa Springs (the "Town") and for the purpose of insuring the uniform and permanent beauty of the Cemetery.

All burial plot and lot Owners, visitors, Town employees, persons working directly or indirectly for burial plot and lot Owners and all burial plots and lots sold shall be subject to these Rules and Regulations, and subject further, to such other ordinances, rules and regulations, amendments or alterations as shall be adopted by the Town from time to time. The reference to these Rules and Regulations in the certificate of ownership to burial plots and lots shall have the same force and effect as if set forth in full therein.

Rules and regulations have been adopted as interpretation of Chapter 7, Article I, "Cemeteries" of the Town of Pagosa Springs Municipal Code.

## 2.0 Definitions

For the purpose of these Rules and Regulations, the following terms and words shall have the following meaning:

Burial lot – a platted lot within the cemetery and may consist of more than one burial plot.

Burial plot – a single space within the Cemetery designated for the interment of the remains of one deceased person or two (2) cremains.

Cemetery – a burial park for earth and crypt interments located in Pagosa Springs, Colorado and owned and administered by the Town.

Cemetery Superintendent – the Public Works Director or his or her designee, sometimes referred to as the Sexton.

Cremains - the cremated remains of a human body.

Decedent – a person who has died.

Disinterment – the removal of the buried remains of a deceased person from earth burial.

In-Town Cemetery Rate – To qualify for an In-Town rate for the interment rights to a cemetery plot or lot, a person shall be a resident of the Town of Pagosa Springs and/or Archuleta County.

Interment – the permanent disposition of the remains of a deceased person by earth or crypt burial.

Interment Rights – the purchase of a burial plot or space to which you have the right to be buried or to designate the burial of someone else.

Memorial – a designated monument, marker, tablet or headstone for family or individual use.

Owner - the person who is named in the original interment agreement as the grantee of the interment rights to a burial plot or lot or the person who has inherited ownership of the interment rights to that burial plot or lot.

Perpetual Care – The general maintenance of lots and burial spaces, as well as the ground, walks, roadways, boundaries and structures within the Cemetery, to the end that said areas shall remain

and be reasonably cared for as Cemetery grounds forever; including but not limited to cutting of grass, raking, the general care and pruning of trees and shrubs, and filling in sunken burial spaces. Such care is subject to weather conditions and other factors beyond the control of the Town of Pagosa Springs.

The term “Perpetual Care” shall in no way be construed as meaning the maintenance repair, or replacement of any memorial, monument or monolith placed or erected on lots or burial spaces; nor the planting of flowers or ornamental plants; nor the maintenance or doing of any special or unusual work; nor the repair or reconstruction of any marble, granite, bronze or concrete work on any section, lot or any portion or portions thereof damaged by the elements, and act of God, common enemy, thieves, vandals, strikers, malicious makers, etc. beyond the reasonable control of the Town, whether the damage be direct or collateral.

Remains - a human corpse or cremains.

Resident – anyone who resides or owns property in the Town of Pagosa Springs and/or Archuleta County, Colorado.

Town – The Town of Pagosa Springs

## 3.0 General Applications of Rules and Regulations

All owners, visitors, employees, persons who are employed, directly or indirectly, by owners and all burial plots and lots sold shall be subject to these Rules and Regulations, and subject, further, to such other ordinances, rules and regulations, amendments or alterations as shall be adopted by the Town from time to time. The reference to these Rules and Regulations contained in other documents shall have the same force and effect as if set forth in full therein. These Rules and Regulations shall be on file and available for public examination in the office of the Town Clerk. Failure to comply with any rule or regulation promulgated under this Article shall be deemed a violation of the Town of Pagosa Springs Municipal Code.

### 3.1 Administration and Supervision

The supervision of the Cemetery shall be by direction of the Town Council through the Cemetery Superintendent, who will employ such persons as may be necessary for the care and maintenance of the Cemetery.

### 3.2 Duties of the Cemetery Superintendent

It shall be the duty of the Cemetery Superintendent to supervise all decorations of plots, lots and graves, supervise plant care for all vegetation, maintain and repair roads and streets, endeavor to prevent the defacing, destruction or damage of memorials and other property in the Cemetery, grant permits required for any improvements, and carry out and enforce these Rules and Regulations of the Cemetery.

### 3.3 Map and Records of Cemetery

It shall be the duty of the Town Clerk to keep a map and the records of the Cemetery and issue certificates of purchase for cemetery lots and permits required by these Rules and Regulations, except that Excavation Permits shall be issued by the Cemetery Superintendent pursuant to Section 7.8 herein. No permits shall be issued without the name and address of the owner of the interment rights to the plot or lot and the plot or lot and section number for which application is made.

### 3.4 Closing Roads & Establishing Grades

The Town shall have the right to close any road in the Cemetery heretofore existing or hereafter constructed and to establish grades.

### 3.5 Indemnification

The Town shall not be responsible for any acts or omissions related to the Cemetery. The Town may at any time require a written indemnification and hold harmless agreement from any person requesting that the Town take or not take any action related to the Cemetery.

### 3.6 When Town Is Not Responsible

The Town shall take reasonable precautions to protect lot owners, and the property rights of lot owners, within the cemetery from loss or damage; but the Town distinctly disclaims responsibility for loss or damage from causes beyond its reasonable control and especially from damage caused by the elements, an act of God, common enemy, thieves, vandals, strikers, malicious mischief makers, explosions, unavoidable accidents, invasions, insurrections, riots, or order of any military or civil authority, whether the damage may be direct or collateral, other than as herein provided.

### 3.7 Errors May Be Corrected

The Town shall have the right to correct any errors that may be made by it, either in making interments, or disinterments, or in the description, transfer, or conveyance of interment rights to any interment property. Corrections can be made:

- a. either by canceling such conveyance of interment rights and substituting and conveying in lieu thereof, interment rights to another burial plot or lot of equal value and, to the extent possible, similar location; or
- b. at the sole discretion of the Town, by refunding the amount of money paid on account for said purchases of interment rights. In the event such error shall involve the interment of the remains of any person in such property, the Town reserves the right to remove and/or transfer such remains so interred to such other property of equal value and similar location as may be substituted and conveyed in lieu thereof.

### 3.8 Amendments

The Town reserves the right, at any time, to adopt new rules and regulations, to amend, alter and/or repeal any rule, regulation and/or article, section, paragraph and/or sentence in these Rules and Regulations. Such new or amended Rules and Regulations shall be binding on all Owners.

## 4.0 Purchase of Interment Rights

### 4.1 Application for Purchase

Applications for the purchase of cemetery lots or burial spaces must be made at the Town Clerk's office. The scheduled prices for the lots are set by the Town Council by resolution. In cases where a space has not been previously purchased, full payment prior to burial is required. The only exception to this policy will be when the mortuary involved assumes full responsibility for payment.

### 4.2 Rights of Owners

All Interment Agreements shall grant to the lot owner or owners the right to use such lots for burial of human remains only, subject to these Rules and Regulations. The fee title to any lot or space conveyed to the purchaser shall remain in the Town subject to the right of burial conveyed to the purchaser.

The interment rights to a burial plot and lot shall be the property only of the person named as grantee in the original Cemetery deed or interment agreement. However, the spouse of the grantee at the time of his or her death shall have a right of interment of his or her remains in the grantee's plot or lot. Moreover, it shall be presumed that the grantee has acquired a plot or lot for the use of his or her immediate family. Unless the presumption is overcome, the Town shall allow interment of any member of the immediate family—subject to the available space in the plot or lot. Members of the grantee's immediate family shall include only the parents, siblings, children, grandchildren, and great grandchildren—whether by birth or adoption—of the grantee and of his or her spouse at the time of the grantee's death, and spouses of each such person at the time of his or her death. The presumption may only be overcome by a written, authenticated statement by the grantee that he or she did not acquire the plot or lot for family use. A written statement shall be considered authenticated if it was witnessed by a notary public at the time of its creation, or by two other witnesses at the time it was created, or if it was handwritten and a professional hand-writing expert certifies that the statement was written by the grantee.

#### 4.3 Indigent

When a request is made by a mortuary to inter an individual with insufficient funds to cover the expenses, the Town will work with the mortuary and any other state or federal agency to share the expenses if the deceased was an Archuleta County resident three months prior to death.

### 5.0 Transfers or Assignments

#### 5.1 Transfer, Assignment or Conveyance of Property Right in Cemetery

No transfer or assignment of any burial space, or interest therein, shall be valid without the consent in writing of the Town first to be had and endorsed upon such transfer or assignment, and thereafter being recorded on the books of the Town. The Town shall have the right to refuse to consent to a transfer or an assignment if there is any indebtedness due the Town by the owner of record.

The right of interment shall be automatically terminated upon the interment elsewhere of the remains of the person or persons who had been entitled thereto.

#### 5.2 Selling Interment Rights to Plots and Lots for Resale

The interment rights in any burial plot or lot shall not be sold to or purchased by a funeral director or other person for purposes of resale or speculation. Resale of interment rights to cemetery plots or lots shall be made through the Town Clerk's office. A person wishing to sell his or her interment rights to a plot or lot shall present the Town Clerk with his or her cemetery deed or interment agreement, which will be held in the Town offices, and the interment rights to the plot or lot shall be made available for sale. At such time as it is resold by the Town Clerk, the original owner of the interment rights to the plot or lot shall be reimbursed the amount originally paid therefore.

#### 5.3 Reversion of Plot or Lot to Town

In accordance with the provisions of Section 31-25-708 of the Colorado Revised Statutes and any successor statutes, the Town may reclaim ownership and all rights to a burial plot or lot that contains no remains, monuments or markers for a period of 75 years or more without any compensation at all to its owner.

## 6.0 Perpetual Care

### 6.1 Perpetual Care Mandatory

All lots or burial spaces shall be sold with perpetual care, the fee to be set by resolution of the Town Council.

### 6.2 Perpetual Care Fee

A perpetual care fee shall be collected from the purchasers of lots or burial spaces. The fee shall be set by the Town Council by resolution after recommendation by the Public Works Director and/or Town Clerk who shall determine the necessary cost of the care of said lands.

### 6.3 Lots Not Now Under Perpetual Care

All lots and burial spaces purchased prior to January 1, 2018 require that a perpetual care fee be paid at the time of opening and closing of the burial space. The amount of such fee shall be the amount that is currently being charged on the other lots and burial spaces.

## 7.0 Interments

### 7.1 Subject to Laws and Orders

Besides being subject to these Rules and Regulations, all interments shall be subject to the orders and laws of the properly constituted authorities of the Town of Pagosa Springs, Archuleta County, the State of Colorado, and the Federal Government.

### 7.2 Application for Interment

Any interment in the Cemetery shall be first approved by the Cemetery Superintendent on an Interment Application. Application for interment shall include an "Authority for Final Disposition" form issued by the Colorado Department of Public Health and Environment or other documentation relating to the death. An application for interment must be submitted to the Cemetery Superintendent at least two (2) business days before the burial time proposed by the applicant.

### 7.3 Time of Interments

Notification for Monday interments must be received prior to 12:00 noon the previous Thursday. No interments will be allowed between 12:00 noon Saturday and 8:00 a.m. Monday or on any National Holiday.

### 7.4 Emergency Burials

Arrangements for emergency burials must be made through the Town Clerk's Office and upon proof of emergency.

### 7.5 Casket Not to be Disturbed

Once a casket containing a body is in the confines of the cemetery, no funeral director or his embalmer, assistant, employee, agent, cemetery official or employee, or any other person shall be permitted to open a casket or to touch a body without the consent of the legal representatives of the deceased, or without a court order.

## 7.6 Not Responsible for Embalming or Identity

The Town shall not be responsible for the interment permit nor for the identity of any persons sought to be interred; nor shall the Town be responsible in any way for the preparation of the body.

## 7.7 Burial Specifications

In order to maintain accurate records, not more than one body and one (1) cremains may be interred in one burial space. In the case of cremains, a maximum of two (2) cremated remains will be allowed in a single burial plot.

All graves shall be at least six inches from the boundary of the burial plot and shall be at least six (6) feet in depth. In the case of cremains, there shall be at least three (3) feet of earth above the highest point of the container and ground level.

## 7.8 Excavations

No excavations in preparation for a burial shall be completed without an Excavation Permit issued by the Cemetery Superintendent. Excavation may be completed by the family or designee without the need for a contractor; however, if heavy equipment is used to excavate, the contractor shall be a licensed contractor with the Town. The Superintendent shall issue the permit if he/she is satisfied that the excavator possesses the equipment, technical competence and good intention to excavate without causing injury to people or permanent damage to the burial plot in question and other parts of the Cemetery grounds. Excavation times are from 7am to 2pm Monday through Thursday. Every excavation must be inspected for proper location and depth by the Town Streets Department

## 8.0 Disinterments

Besides being subject to these Rules and Regulations, all disinterments shall be subject to the orders and laws of the properly constituted authorities of the Town of Pagosa Springs, Archuleta County, the State of Colorado, and the Federal Government.

### 8.1 Permission for Disinterment

No disinterment of a body or cremains will be made without either a court order of a court of competent jurisdiction or a signed affidavit from the surviving spouse or next of kin, on a form provided by the Town, stating that the disinterment is being requested for a valid reason, that the application is being made by a proper person, that there is no opposition to the disinterment by the surviving spouse, next of kin, or by the expressed wishes of the decedent, and that the affiant agrees to indemnify the Town and hold it harmless from any liability that might result from the disinterment and release it from any claims the affiant may have, then or in the future, by reason of the disinterment. The Town Clerk shall have the right to require a court order for disinterment at any time prior to the disinterment when circumstances exist or arise which indicate that there is a question as to the reason for the disinterment or as to whether there is opposition to the disinterment.

### 8.2 Notice of Disinterment Required

The Town reserves the right to require at least ten days' notice prior to any disinterment. Disinterments must be conducted during the hours of 9:00 a.m. and 2:00 p.m. No disinterment will be made on any Saturday, Sunday, or legal holiday or on the day upon which any holiday is legally observed.

### 8.3 Town Not Responsible for Disinterments

All disinterments of a body or cremains will be the responsibility of the family. The Town shall not assume responsibility for any disinterments. Families wishing to disinter a body or cremains shall procure the services of a competent funeral director who must first provide evidence of liability insurance satisfactory to the Town of Pagosa Springs.

## 9.0 Decoration of Lots and Burial Plots

All decorations, plantings, and permanent improvements shall remain within the boundaries of an owner's burial plot or lot.

### 9.1 Flowers

Artificial or fresh, cut flowers may be placed immediately adjacent to a monument or marker at any time. However, flowers will be discarded by the Cemetery Superintendent when he deems them unsightly.

### 9.2 Fresh Sprays and Wreaths

Sprays and wreaths made from fresh cut flowers will be allowed, and they may be removed within two weeks, or if in the Cemetery Superintendent's opinion, when they become unsightly.

### 9.3 Christmas Blankets and Wreaths

Christmas blankets and wreaths will be allowed from December 1st through March 1st.

### 9.4 Artificial Sprays and Wreaths

Artificial sprays and wreaths will be allowed from May 1st through June 15th and from December 1st through March 1st. The Cemetery Superintendent may remove all artificial sprays and wreaths when they become unsightly.

### 9.5 Fencing, Benches, and Other Articles

Fences, railings, curbs, hedges and other bordering spaces around lots and plots are not allowed. Fences and other bordering applications erected prior to January 2, 2018 will be allowed to remain if they are in good condition and properly maintained by the plot/lot owner.

Additionally, the placing of boxes, shells, stones, boulders, toys, metal designs, ornaments, chairs, settees, unattached vases, glass, urns, wood or metal cases and similar articles upon lots shall not be permitted.

### 9.6 Planting of Trees, Shrubs, Plants, Flowers

The Town has exclusive authority in planting trees, shrubs, plants, and flowers for ornamentation of the cemetery. All other planting is prohibited. If any trees, shrubs, bushes or flowers growing on any space or lot shall become detrimental, in the sole discretion of the Town, to adjacent lots or spaces, walkways, or roads, or in any way interferes with the general flow of the cemetery, they will be removed without notice.

### 9.7 Maintenance

Maintenance of any improvements shall be the responsibility of the owner.

### 9.8 Liability for Decorations

The Town shall not be held liable for lost, misplaced or broken flower vases or for damage by the elements, thieves, vandals, or by causes beyond its control.

## 10.0 Conduct of Persons Within the Cemetery

### 10.1 Hours Grounds Open

The Cemetery grounds will be open for visitation from 7:00 am to 7:00 pm, seven days a week.

### 10.2 Visitors

Visitors within the Cemetery grounds shall conduct themselves with decorum at all times and with strict accordance with these Rules and Regulations. This applies to outside workers, stone masons, florists, etc., as well as to those persons directly employed by the Town.

### 10.3 Trespassers on Cemetery Property

Only the owner, his relatives and friends and authorized Cemetery workers will be permitted on any Cemetery lot or plot. Any other person thereon shall be considered a trespasser, to whom the Town shall owe no duty, and bear no liability, of any kind to maintain the lot or plot in a safe condition. A person within the Cemetery grounds shall use only the roads, drives, and walks for transit, except that such a person may walk on the grass only if that is the only way to reach the plot or lot which he or she has a reason to visit or work on. Any person using any other part of the Cemetery shall be considered a trespasser, to whom the Town shall owe no duty, and bear no liability, of any kind to maintain the Cemetery grounds in a safe condition.

### 10.4 Rubbish

Throwing rubbish on any part of the grounds or buildings, except those designated by the Town, is prohibited.

### 10.5 Automobiles

Automobiles shall not be driven through the Cemetery at a speed greater than five (5) miles per hour. Vehicular traffic is limited to improved roadways only.

### 10.6 Trucks and Heavy Hauling

Heavy hauling, trucks, or commercial vehicles of any kind are not permitted within the Cemetery grounds, except when they are conducting business or are in connection with Cemetery work, and then only by permission of the Cemetery Superintendent.

### 10.7 Peddling or Soliciting

Peddling of flowers or plants or the soliciting for the sale of any commodity is absolutely prohibited within the confines of the Cemetery.

### 10.8 Firearms and Hunting

No firearms shall be permitted within the Cemetery, except at a military funeral or similar occasion, by a Police Officer, by written permission of the Cemetery Superintendent, or as permitted by the Colorado Concealed Carry Act, § 18-12-201, *et seq.*, C.R.S. Hunting or in any way disturbing birds or fowl, or discharging firearms, fireworks, or other missiles within or over any portion of the Cemetery or around the gates, fences or roads adjoining the same is prohibited.

### 10.9 Notices of Advertisements

No signs or notices or advertisements of any kind shall be permitted within the Cemetery.

## 10.10 Improprieties

It is of the utmost importance that at all times propriety in the Cemetery be strictly observed. The Cemetery Superintendent has the power to prevent or stop any behavior which he deems to be an impropriety, as well as the power to prevent or stop assemblies which he deems to constitute or to be likely to constitute an impropriety.

## 10.11 Damage of Cemetery Property

No person shall deface, damage, destroy or injure any memorials or other property in the Cemetery or perform other acts, which may be prohibited in the Rules and Regulations as adopted by the Town.

## 10.12 Candles, Votive Candles, Fires

No person shall light or allow to burn any candles, votive candles, fire-lit objects of any type, or fires anywhere within the Cemetery or Cemetery Property.

## 10.13 Smoking Prohibited

Smoking is prohibited in the Cemetery and on Cemetery Property. Signs shall be posted at the entrance to the Cemetery indicating that smoking is prohibited in the Cemetery and on Cemetery Property.

# 11.0 Fees, Gratuities and Commissions

## 11.1 Fees

Any request required or permitted by these Rules and Regulations shall be submitted to the Town Clerk or Cemetery Superintendent as required by these Rules and Regulations with the appropriate fee established for such request. A copy of the Town's current fee schedule is available from the Town Clerk. Any Cemetery charges shall be paid prior to the services being rendered.

## 11.2 Fees, Gratuities and Commissions May Not Be Accepted by Town Employees

No person, while employed by the Town shall receive any fee, gratuity or commission, except from the Town, either directly or indirectly, under penalty of immediate dismissal.

# 12.0 Rules for Memorial Work in Cemetery Sections

Only one memorial for each burial plot is permitted. It must be placed 6" inside all plot or lot boundaries. A temporary marker, erected for no longer than twelve months, is required upon interment. A permanent marker or monument must be erected immediately after the temporary marker is removed.

No owner shall erect or place, or cause to be erected or placed, on any lot or burial plot in the Cemetery any memorial which is obscene or offensive. Ornaments suggesting war or violent death or destruction are out of harmony with the ideals which the Cemetery is trying to portray and are prohibited.

## 12.01 Deposit for Monument

A refundable deposit for a grave marker is required prior to the time of burial unless a copy of a paid receipt from a monument company is provided. If a permanent grave marker is placed on the burial plot within twelve (12) months from interment, said deposit shall be refunded, without interest. If a permanent grave marker is not placed on the gravesite within twelve (12) months from interment, the deposit will be used by the Town of Pagosa Springs to purchase and place a grave marker on the burial plot. The fee for a refundable deposit for a grave marker is set forth in the Town's fee schedule.

### 12.03 Foundations

Foundations for monuments shall not exceed inches in width for any single burial space. All foundations should extend a minimum of two (2) inches beyond the length and width of the base stone.

### 12.02 Damage to Monuments

While the Town will exercise due care to protect memorials or other structure on any lot or burial plot in the Cemetery, it disclaims responsibility for any damage thereto. If monuments are pushed over or damaged by an act of vandalism, the Town will not be held responsible. Owners are responsible for the care and maintenance of the monuments erected on their plots.