

ORDINANCE NO. 13 - 2014

Series of 2014

AN ORDINANCE OF THE TOWN OF ERIE, COLORADO AMENDING TITLE 5, "PUBLIC HEALTH AND SAFETY," CHAPTER 2, "ERIE CEMETERY," OF THE ERIE MUNICIPAL CODE; AMENDING TITLE 1, "ADMINISTRATION AND PERSONNEL," CHAPTER 4, "MUNICIPAL COURT; GENERAL PENALTY," SECTION 1-4-6, "VIOLATIONS AND PENALTIES ENUMERATED," OF THE ERIE MUNICIPAL CODE; ADOPTING "RULES AND REGULATIONS GOVERNING THE ERIE MUNICIPAL CEMETERY"; AND, SETTING FORTH DETAILS IN RELATION THERETO.

WHEREAS, the Board of Trustees of the Town of Erie desires to amend Title 5, "Public Health and Safety," Chapter 2, "Erie Cemetery," and Title 1, "Administration and Personnel," Chapter 4, "Municipal Court; General Penalty," Section 1-4-6, "Violations and Penalties Enumerated," of the Erie Municipal Code; and,

WHEREAS, the Board of Trustees of the Town of Erie desires to adopt "Rules and Regulations Governing the Erie Municipal Cemetery"; and,

WHEREAS, it is deemed to be in the best interest of the public health, safety and welfare of the residents of the Town of Erie to the Erie Municipal Code as set forth herein below and to adopt "Rules and Regulations Governing the Erie Municipal Cemetery".

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO, AS FOLLOWS:

Section 1. Title 5, "Public Health and Safety," Chapter 2, "Erie Cemetery," of the Erie Municipal Code is hereby amended to repeal Sections 5-2-3 through 5-2-9, inclusive.

Section 2. Title 5, "Public Health and Safety," Chapter 2, "Erie Cemetery," of the Erie Municipal Code is hereby amended to adopt a new Sections 5-2-3, "Rules and Regulations," and 5-2-4, "Violations and Penalty," to read as follows:

5-2-3. Rules and Regulations Governing the Erie Municipal Cemetery.

The Town Council shall adopt rules and regulations consistent with the provisions of this Article governing the Erie Municipal Cemetery, which 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 this Code.

5-2-4. Violations and Penalty.

(a) Every person convicted of a violation of any provision of this Article or of the Rules and regulations adopted pursuant to this Article shall be punished as provided in

Section 1-4-6 A. of this Code.

(b) In addition to other remedies available to the Town, the Town may commence an action to enjoin the alleged violation of any provision of this Article, or to authorize and compel the removal, termination or abatement of such violation.

Section 3. Title 1, "Administration and Personnel," Chapter 4, "Municipal Court; General Penalty," Section 1-4-6, "Violations and Penalties Enumerated," sub-part A, "Noncriminal Violations," of the Erie Municipal Code is hereby amended to add Sections 5-2-4, "Violations and Penalty," to the list of noncriminal penalties.

Section 4. The following "Rules and Regulations Governing the Erie Municipal Cemetery" are hereby adopted: See **Exhibit A**, Attached hereto and incorporated herein by this reference.

Section 5. Severance Clause. If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the ordinance. The Town Board hereby declares that it would have passed the ordinance including each part, section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more parts, sections, subsections, sentence, clauses or phrases be declared invalid.

Section 6. Repeal. All ordinances or resolutions, or parts thereof, in conflict with this ordinance are hereby repealed, provided that such repeal shall not repeal the repeal clauses of such ordinance nor revive any ordinance thereby.

Section 7. Effective Date. This ordinance shall take effect thirty (30) days after publication following final passage.

INTRODUCED, PASSED, ADOPTED AND ORDER PUBLISHED IN FULL BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE THIS 27th DAY OF MAY, 2014.

PUBLISHED IN FULL ON THE 4th DAY OF June, 2014.

TOWN OF ERIE, COLORADO, a Colorado municipal corporation

By: 
Tina Harris, Mayor



ATTEST:

By: 
Nancy Parker, Town Clerk

Exhibit A

RULES AND REGULATIONS GOVERNINIG THE ERIE MUNICIPAL CEMETERY

1. DECLARATION OF PURPOSE.

These rules and regulations shall be held to be minimum requirements enacted for the mutual protection of all plot owners at the Erie Municipal Cemetery and the Town of Erie and to ensure the cemetery a uniform and permanent beauty.

2. DEFINITIONS.

WORDS AND TERMS DEFINED. As used in these rules and regulations, the following terms shall have the meanings indicated:

CEMETERY - The term "cemetery" is hereby defined as a burial park for earth interments.

INTERMENT - The term "interment" shall mean the permanent disposition of the remains of a deceased person by earth or crypt burial.

INTERMENT AGREEMENT-A provisional right to interment for the sole use and purpose of receiving interment, entombment or inurnment within the cemetery; this interment, entombment or inurnment right as assigned in this Agreement may not be transferred without the express written approval of the Town and is subject to the Rules and Regulations of the Erie Municipal Cemetery, including the termination of this provisional Right to Interment should there appear to be abandonment of this Right and the Town is unable to locate the owner, his/her heirs or assigns.

DISINTERMENT - the term "disinterment" is the removal of the remains or cremains of a deceased person, the casket, if any, the burial receptacle from the ground or urn from the columbarium. The Town will expose the vault or in the case of burial without a vault, expose the casket, burial receptacle or urn. The Town shall not be required to provide either personnel or equipment to lift the vault, casket or burial receptacle from the ground.

LOT - the term "lot" shall mean a platted lot within the cemetery and may consist of more than one burial space.

BURIAL SPACE - the term "burial space" shall mean a single space within a platted lot designed for the interment of one body.

DIRECTOR OF PUBLIC WORKS – shall mean the director of the department of Public Works for the Town of Erie. The Department of Public Works shall have the right of general control of the cemetery in all matters, whether or not such matters are specifically covered by these rules and regulations.

MONUMENT - the term "monument" shall designate a monument, marker, tablet or headstone for family or individual use.

URN – a vase or other container used to hold the ashes of a cremated body.

3. APPLICATION OF REGULATIONS.

A. COMPLIANCE WITH REGULATIONS.

All plot owners, visitors, cemetery employees, persons working directly or indirectly for lot owners and all lots sold shall be subject to these rules and regulations, and subject further, to such other rules and regulations, amendments or alterations as shall be adopted by the Town of Erie from time to time; and the reference to these rules and regulations in the interment agreement to burial spaces shall have the same force and effect as if set forth in full therein.

B. EXCEPTIONS AND MODIFICATIONS.

Special cases may arise in which the literal enforcement of a rule may impose unnecessary hardship. In such an instance the Town shall have the right, without notice, to make exceptions, suspensions or modifications in any of these rules and regulations.

C. AMENDMENTS.

The Town may, and it hereby expressly reserves the right, at any time or times, to adopt new rules or regulations, to amend, alter and/or repeal any rule, regulation and/or article, section, paragraph and/or sentence in these rules or regulations. Such new or amended rules and regulations shall be binding on the owners of all lots or burial spaces regardless of the date such owner acquired title.

4. ADMINISTRATION AND ENFORCEMENT.

A. OWNED AND CONTROLLED BY THE TOWN OF ERIE.

Erie Municipal Cemetery is owned and managed by the Town of Erie, Colorado. The Town has the right of general control of the cemetery in all matters, whether or not such matters are specifically covered by these rules and regulations.

B. MANAGED BY THE DIRECTOR OF PUBLICWORKS/TOWN CLERK.

The management of the cemetery may be delegated by the Director of Public Works to the Town Clerk who in turn shall be responsible for direct and complete supervision of the cemetery in all matters.

C. BUSINESS OFFICE.

All applications for purchase, transfer, assignment or repurchase of cemetery lots; interment and disinterment orders; or annual care or special permits of any kind must be made through the Town Clerk at Town Hall.

D. ADMISSION TO CEMETERY.

Entrance into the cemetery except through the main entrance is strictly forbidden. The Town reserves the right to refuse admission to the cemetery and to refuse the use of any of the cemetery facilities to any person or persons whom the Town may deem objectionable to the best interest of the cemetery.

5. PURCHASE OF LOTS.

A. APPLICATIONS FOR PURCHASE.

Applications for the purchase of cemetery lots or individual burial spaces must be made at the Town Clerk's office where plats showing the size, location and description of all lots and the schedule of prices will be kept on file. The schedule of prices for the lots and columbarium niches are set by the Town Council by ordinance.

B. IMMEDIATE USE.

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.

C. INDIGENT.

When a request is made by a mortuary to inter an individual with insufficient funds to cover expenses, the Town will work within the expense allowance granted by the Department of Social Services if the deceased was an Erie resident three months prior to or at the time of death. The Town may require proof of prior residency. This shall not prohibit the Town from participating in any arrangement with other Cemeteries and/or Mortuaries, the purpose of which is to share expenses in cases not covered by Social Service allowances.

D. INTERMENT AGREEMENT CONVEYS ONLY THE RIGHT OF BURIAL.

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, space or niche conveyed to a purchaser shall remain in the Town subject to the right of burial conveyed to the purchaser.

6. TRANSFERS OR ASSIGNMENTS.

A. CONSENT OF TOWN.

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, 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.

7. RIGHTS AND RESPONSIBILITIES OF TOWN.

A. WORK TO BE DONE BY TOWN.

Except as otherwise provided herein, all grading, landscape work, improvements of any kind, and all care of lots, shall be done by the Town, all trees, shrubs and bushes of any kind shall be planted, trimmed, cut or removed, and all opening and closing of graves shall be made by the Town.

B. TOWN MUST DIRECT AND MAY REMOVE IMPROVEMENTS.

All improvements or alterations of individual property in the cemetery shall be under the direction of and subject to the consent, satisfaction and approval of the Parks Division, made without the Town's written consent, or, at any time in the Town's judgment, they become unsightly to the eye, the Parks Division shall have the right to order such improvements or alterations removed, altered or changed without consent of the lot owner.

C. RIGHT TO REPLAT, REGRADE AND USE PROPERTY.

The right to enlarge, reduce, replat and/or change the boundaries or grading of the cemetery or of a section or sections, from time to time, including the right to modify and/or change the locations of or remove or regrade roads, drives and/or walks, or any part thereof, is hereby expressly reserved in the Town. The right to lay, maintain and operate or alter or change pipelines and or gutters for sprinkling systems, drainage, lakes, etc., is also expressly reserved; as well as the right to use cemetery property, not sold to individual lot or grave space owners, for cemetery purposes, including the interring and preparing for internment of dead bodies, or for anything necessary, incidental or convenient thereto. The Town reserves for itself and to those lawfully entitled thereto, a perpetual right to ingress and egress over lots for the purpose of passage to or from other lots.

D. 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.

8. INTERMENTS.

A. 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 Erie, Weld County, the State of Colorado, and the Federal Government.

B. TIME OF INTERMENTS.

At least 16 working hours (two working days) must be given for preparation of a grave. 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.

C. EMERGENCY BURIALS.

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

D. DISASTER.

In the event of a disaster, which results in numerous burials for the cemetery, the cemetery crew will work whatever hours deemed necessary by the Town Administrator or the Director of Public Works. The Town Administrator or Director of Public Works shall have the authority to make exceptions to any and all regulations necessary in order to handle the numerous burials as orderly and as quickly as possible.

E. CASKET NOT TO BE DISTURBED.

Once a casket containing a body is in the confines of a 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.

F. APPROVED GRAVE LINERS.

Every interment must be made in an approved outer liner of steel or concrete, and shall be supplied by the funeral home.

G. 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.

H. NUMBER OF INTERMENTS.

In order to maintain accurate records, not more than one body or the remains of one body may be interred in one burial space except as provided below:

1. Two cremains.
2. One regular interment and one cremains. In the case of double occupancy, only one headstone will be allowed.

I. USE OF EQUIPMENT

Tents, artificial grass, lowering devices and other equipment in making interments, disinterments and removals shall be the responsibility of the funeral home in charge of the burial or disinterment.

J. INTERMENT OF CREMAINS.

In order to inter cremains in the cemetery, the applicable fee must be paid to the Town of Erie. The Town shall not be liable for the protection of any cremains. The person(s) requesting interment of cremains may choose containers of hard plastic, wood, marble, metal, or ceramic.

J. LOCATION OF INTERMENT SPACE.

When instructions regarding the location of an interment space on a lot cannot be obtained, or are indefinite, or when for any reason the burial space cannot be opened where specified, the Town may, in its discretion, open the space in such location on the burial lot as it deems best and proper, so as not to delay the funeral; and the Town shall not be liable in for damages for any error or change made.

K. ORDERS GIVEN BY TELEPHONE.

When making arrangements for burial the exact location (i.e. block, lot or space) must be given. The Town shall not be held responsible for any order given by telephone, or for any mistake occurring for want of precise and proper instructions as to the location of the burial space.

L. ERRORS MAY BE CORRECTED.

The Town reserves the right, and shall have the right to correct any errors that may be made by it (either in making interments or disinterment's or in the description transferring or conveying any interment property) either by canceling such conveyance and substituting and conveying in lieu thereof other interment property of equal value and in similar location as far as possible, as may be selected by the Town; or, in the sole discretion of the Town, by refunding the amount of money paid on account of said purchase. In the event such error shall involve the interment of the remains in such property, a person requesting removal shall assume full responsibility for disinterment which shall be carried out pursuant to paragraph 10.0.

M. DELAYS IN INTERMENT CAUSED BY PROTEST.

The Town shall in no way be held liable for any delay in the interment of a body where a protest to the interment has been made, or where the rules and regulations have not been complied with; and, further, the Town reserves the right, under such circumstances to instruct a funeral home to place the body in a receiving vault until the full rights have been determined. The Town shall be under no duty to recognize any protests of interments unless they are made in writing and filed with the Town Clerk within 2 weeks of the interment.

9. DISINTERMENTS.

A. SUBJECT TO LAWS AND ORDERS.

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

B. PERMISSION FOR DISINTERMENTS.

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.

C. DISINTERMENT PROHIBITED UNDER CERTAIN CIRCUMSTANCES.

Disinterment of a body so that the lot or burial space may be sold for profit to the heirs of the deceased or to any other persons or removal contrary to the expressed or implied wish of the original lot or burial space owner is repugnant to the ordinary sense of decency and absolutely forbidden.

D. 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.

E. PAYMENT OF FEES.

All fees assessed by the Town for disinterments shall be paid to the Town Clerk's office prior to the disinterment.

F. TOWN NOT RESPONSIBLE FOR DISINTERMENTS.

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

10. DECORATION OF LOTS.

A. PLANTS, TREES, SHRUBS, FLOWERS AND BORDERS.

1. The Parks Division has exclusive authority in the planting of all trees, shrubs, plants, flowers and grass for the ornamentation of the cemetery. **Planting of trees, shrubs, plants, flowers, grass or any other type of item is strictly prohibited.**
2. Fences, railings, curbs, hedges and other bordering of spaces must be approved by the Town prior to their installation. Nothing shall be placed upon lots and graves other than flowers, vases containing flowers, wreaths, flags and other temporary decoration. These will be removed and disposed of by cemetery crews, at their sole discretion, when they become dead, faded, broken or anything of a similar nature (particularly artificial flowers) without prior notice to the lot owner.
3. If any trees, shrubs, bushes or flowers growing on any space or lot shall become detrimental, in the sole discretion of the Parks Division, to adjacent lots or spaces, walkways or roads or in any way interferes with the general design of the cemetery, they will be removed without notice.

B. LIABILITY AND REGULATION OF DECORATIONS.

The Town of Erie 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. The Town reserves the right to regulate the method of decorating lots and the right to remove any decoration so that a uniform beauty may be maintained.

11. MEMORIAL WORK IN CEMETERY.

A. PRODUCERS AND RETAIL DEALERS.

1. Letter cutters, persons or firms who engage in the business of cleaning monuments, and who are not connected with established retail dealers, and all other persons or firms must secure permission from the Director of Public Works and/or the Town Clerk before any work in the cemetery is commenced. In order to procure such permission, it will be necessary for the person or firm to submit satisfactory evidence of their ability to properly perform the work for which they have been engaged.
2. Retail dealers engaged in erecting or placing monuments or other structures shall be considered general contractors and must provide evidence of liability insurance satisfactory to the Town of Erie.
3. Persons engaged in erecting monuments, or other structures, are prohibited from attaching ropes or other devices to monuments, trees or shrubs, and are prohibited from scattering their material or tools over adjoining lots or from blocking roadways or walks, or from leaving their material or tools on the grounds longer than is absolutely necessary. They must do as little injury to the grounds, trees and shrubs as is possible and must remove all debris and restore the ground to its original condition.
4. While a funeral or an internment service is being conducted nearby, all work of any description shall cease.

B. MONUMENTS.

1. Only one monument for each burial space shall be permitted.
2. While the Town will exercise due care to protect raised letters, carving or ornaments on any monument or other structure on any lot in the cemetery, it disclaims responsibility for any injury thereto.
3. No copying, curbing, hedging, grave mounds, borders, enclosures of any kind, or walks of any kind shall be allowed to be built or placed on any lot in the cemetery without written consent of the Town. The Town reserves the right to remove the same without recourse and without prior notice to the lot owner, if so planted, erected or placed.
4. No lot owner shall erect or place or cause to be erected or placed, on any lot in the cemetery, any monument in respect of which the Director of Public Works and/or Town Clerk disapproves and if erected or placed, may be removed by the Town without prior notice to the lot owner.

C. FOUNDATIONS.

1. All foundations for monuments shall be the responsibility of the lot owner. The lot owner shall procure the services of a monument company for foundation work in the cemetery. Charges for such work will be paid directly, by purchaser, to the monument company who must furnish evidence of liability insurance in an amount acceptable to the Town of Erie.
2. Prior to placement of a foundation and/or monument, an appointment must be made either with the Town Clerk in order for her/him to locate the burial lot(s). Notice must be given at least two business days (48 hours) in advance prior to placement of a foundation and/or monument. The Town will assume no responsibility for an incorrect placement for any foundation and/or monument if placed prior to contacting the Town Clerk.

D. MISCELLANEOUS

1. Should any monument be installed without the services of an approved monument company, become unsightly, dilapidated or a menace to the safety of visitors, the Town shall have the right to correct the condition or remove the same at the expense of the lot owner.
2. No monument shall be removed from the cemetery, except by the Town unless the written order or permission of the lot owner is present to the Town and permission is granted by the Town.

12. PROHIBITED AND RESTRICTED ACTS AND CONDITIONS.

A. ENTRY TO CEMETERY:

It is unlawful for any person to enter the cemetery grounds at any time except during regular cemetery hours of 9:00 a.m. to 6:00 p.m. when the cemetery is open unless permission has been obtained from the town.

B. CONDUCT OF PERSONS:

1. All persons visiting the cemetery shall show due respect and observe all proprieties due a cemetery. Loud talking and use of profane language is forbidden.
2. Loitering is not permitted inside the Cemetery.
3. Bicycles and motorcycles are prohibited.
4. Improper assemblages will not be tolerated.

C. DESTRUCTION OF PROPERTY:

It shall be unlawful for any person who is not authorized by the town to destroy, mutilate, cut, remove, break or injure any trees, shrubs, plants or other ornaments. No person shall destroy, cut mutilate, remove, break, injure or deface any walls, sidewalks, fences, gateposts or other things used in or belonging to the cemetery.

D. ADVERTISING PROHIBITED: No signs or notices or advertisements of any kind shall be permitted in the cemetery.

E. ANIMALS: All domestic animals including dogs and horses are forbidden in the cemetery

F. SMOKING PROHIBITED: No open burning of any kind, including but not limited to candles, lighters or matches.

13. PAYMENT OF FEES.

A. ASSESSMENT: Fees will be assessed as provided in Section 2-10-9 of this Code.

B. DISPOSITION OF PROCEEDS:

1. Sale of Lots and Grave Sites: All monies received from the sale of lots and grave sites shall be placed in the general fund.
2. Burials or Disinterments: All monies received from burial or disinterment charges shall be placed in the general fund.
3. Donations: All donations received shall be placed in the perpetual care fund.

C. EXPENDITURE OF FUNDS:

1. Funds shall be used for capital improvements or major maintenance or repair of the cemetery.
2. Funds shall be disbursed through the regular annual budgetary process, an annual allocation and all bills approved by the board of trustees prior to payment.
3. Funds shall be invested in the most prudent manner as part of the ordinary responsibility of the town treasurer.

14. RECORDS, RECEIPTS and BURIAL ORDERS.

The town clerk or designee shall keep all records of the cemetery in the town hall and shall receive all required payments to the cemetery. The clerk or designee shall, upon proper payment and notification, issue a burial order to the public works department setting forth the grave space, time of burial and time of closing.