

Chapter 13-04

BOISE CITY CEMETERIES

Sections:

| | |
|-----------------|---|
| 13-04-01 | LEGAL AUTHORITY |
| 13-04-02 | PURPOSE |
| 13-04-03 | SCOPE |
| 13-04-04 | DEFINITIONS |
| 13-04-05 | INTERMENT |
| 13-04-06 | MEMORIALS |
| 13-04-07 | RECORDS |
| 13-04-08 | CEMETERY MAINTENANCE AND CARE |
| 13-04-09 | ABANDONED LOTS |
| 13-04-10 | DEPARTMENT AUTHORITY |
| 13-04-11 | DAMAGE TO CEMETERY PROHIBITED |
| 13-04-12 | VIOLATION A MISDEMEANOR; PENALTIES |
| 13-04-13 | SEVERABILITY |

Section 13-04-01 LEGAL AUTHORITY.

Idaho Code Section 50-320 and Idaho Code Title 27, Chapter 3, authorize the City to acquire, hold, pay for, improve, and regulate municipal cemeteries, and to convey, by certificate, the right to be buried in a lot within a municipal cemetery.

Section 13-04-02 PURPOSE.

The purpose of this chapter is to ensure the orderly and efficient management, oversight, maintenance, and care of Boise City's cemeteries.

Section 13-04-03 SCOPE.

This chapter establishes policies, standards, requirements, and procedures applicable to all cemeteries owned, managed, operated, and maintained by Boise City.

Section 13-04-04 DEFINITIONS.

For purposes of this chapter, the following terms, phrases, words, and derivations shall have the meaning given herein, unless the context clearly indicates a different meaning. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number shall include the plural number. The word "shall" is always mandatory and not merely directory. Words used throughout this chapter, but not defined herein, shall have their plain, ordinary, and common meaning. Words indicating gender shall include and apply to all genders.

- A. **Cemetery:** A defined area of real property that is reserved and set aside by Boise City for the disposition and memorialization of remains. A cemetery may include one (1) or more columbaria, crypts, plots, and mausoleums.
- B. **Certificate:** A certificate of license to inter in a cemetery.
- C. **City Council:** The Council of the city of Boise City, Idaho, its designee, or its authorized representative.
- D. **Columbarium:** A structure, similar to a mausoleum, but designed for the interment of remains.
- E. **Commission:** The Boise City Parks and Recreation Commission, its designee, or its authorized representative.
- F. **Crypt:** A vault or chamber used for keeping remains.
- G. **Department:** The Boise City Department of Parks and Recreation, or its authorized representative.
- H. **Grave:** An excavation into the earth intended for use as a place of burial.
- I. **Inter:** To place, deposit, or entomb remains in a columbarium, crypt, grave, lot, mausoleum, niche, or tomb.
- J. **Lot (or Burial Lot):** The cemetery grounds immediately surrounding a single grave.
- K. **Mausoleum:** A permanent, above-ground building designed for entombment.
- L. **Memorial:** Any object permanently placed on or affixed to a columbarium, crypt, grave, lot, mausoleum, niche, or tomb to preserve the memory of a person. Types of memorials may include, without limitation:
 - 1. **Gravestone:** A stone or marker with an inscription placed or installed near a grave;
 - 2. **Headstone:** A gravestone located at the head of a grave;
 - 3. **Marker:** Any object permanently placed on or affixed to a columbarium, crypt, grave, lot, mausoleum, niche, or tomb; or
 - 4. **Monument:** A stone, an object, a building, or a structure intended or used to preserve the memory of a person.
- M. **Niche:** A recess in a wall or columbarium used for the placement of remains.
- N. **Proprietor:** The current or last known holder of a certificate. A proprietor possesses a right

of fee simple determinable in the columbarium, crypt, grave, lot, mausoleum, niche, tomb, vault, or other designated on the certificate, subject to reversion following a determination of abandonment, as provided herein.

- O. **Remains:** The body of a deceased person, in whole or in part, regardless of its form or condition.

Section 13-04-05 INTERMENT.

A. Certificate Required.

1. No person shall inter remains in a cemetery without first purchasing a certificate from the Department.
2. Pursuant to Idaho Code Section 50-320.C., each certificate shall:
 - a. Be executed by the Mayor and countersigned by the City Clerk, under the seal of Boise City;
 - b. Include the name of the person to whom the certificate is issued;
 - c. State that the proprietor of the certificate possesses the right to be interred in the columbarium, crypt, grave, lot, mausoleum, niche, tomb, vault, or other place within a cemetery that is specifically described on the certificate.
3. A certificate shall vest in the proprietor a right in fee simple determinable to be interred, or otherwise laid to rest in the particular location within a cemetery described on that certificate. Pursuant to Idaho Code Title 27, Chapter 3, the right in fee simple determinable conveyed by a certificate is expressly subject to a right of reverter or escheatment back to Boise City upon a finding of abandonment, after completing the notice procedure contained in Section 13-04-09.C., which finding of abandonment shall be the condition precedent to the right of reverter or escheatment back to Boise City.
4. No certificate shall be issued unless and until the application required by the Department is completed and submitted.

- B. All charges and fees for issuance of certificates, interments, disinterments, permits, and all other cemetery services, such charges and fees having been approved by the City Council and listed on the Department's Fee Schedule, shall be paid in full prior to issuance of the license or permit, and prior to the services being provided.

- C. The mortician, undertaker, or funeral director, or the decedent's heirs, representatives, or agents shall apply for and obtain all required licenses, permits, and authorizations for interments, disinterments, and other cemetery services prior to the services being provided. Boise City shall not be responsible for obtaining any required license, permit, or

authorization, or for confirming the identity of the person being interred.

- D. Boise City shall not be held liable for any damage to an interment container in making an interment or disinterment.
- E. In the event of an error involving interment of remains, Boise City reserves the right to disinter, exhume, and reinter the remains in any other available columbarium, crypt, grave, lot, mausoleum, niche, tomb, or vault (as the case may be) of equal or greater value and similar location. Boise City also reserves the right to correct any errors made on an inscription or memorial.
- F. No person shall divide any columbarium, crypt, grave, lot, mausoleum, niche, tomb, or vault into smaller portions, and no person shall use any columbarium, crypt, grave, lot, mausoleum, niche, tomb, vault, or other burial space for any purpose other than the disposition of remains.
- G. Interments of remains shall be limited to the proprietor and to the proprietor's spouse, children, authorized heirs, and those authorized, in writing, by the proprietor.
- H. No person, other than Department employees, contractors, and agents who are working within the scope of their authorized duties, shall inter remains or disinter, exhume, or transfer any remains within a cemetery without the prior express written consent of the Department.
- I. Except as otherwise provided herein, all remains interred in a cemetery shall be in a concrete, plastic, metal vault, or in a reinforced concrete box or liner. The Department shall approve and adopt rules, regulations, and specifications for the vaults and liners, and for the treatment of remains.
- J. Cremated remains shall be exempt from the liner, box, and vault requirements of section 13-04-05.I., immediately above.

Section 13-04-06 MEMORIALS.

- A. The Department is authorized to create policies governing the specifications of memorials and rules and regulations for the ornamentation and beautification of memorials.
- B. No person shall erect, build, place, or affix any memorial, as defined herein, within a cemetery without obtaining approval from the Department, complying with the specifications pertaining to memorials set forth by the Department, and paying the fees listed in the Department's Fee Schedule.
- C. Within the monument sections of a cemetery, planting beds are allowed, subject to the requirements and conditions established by the Department.

Section 13-04-07 RECORDS.

- A. The Department shall maintain records of all sales and transfers of certificates of licenses to inter, which records shall include, at a minimum:
1. The proprietor's full name, address, and telephone number;
 2. The amount paid for the certificate;
 3. The certificate issuance date;
 4. A specific description of the columbarium, crypt, grave, lot, mausoleum, niche, tomb, vault, or other location or place within a cemetery identified on the certificate; and
 5. The full name of each transferee or assignee of the certificate.
- B. The Department shall maintain records of all columbaria, crypts, graves, lots, mausoleums, niches, tombs, and vaults, which records shall include, at a minimum:
1. A specific description of the columbarium, crypt, grave, lot, mausoleum, niche, tomb, vault, or other location or place within a cemetery;
 2. The name, address, and telephone number of the proprietor (if any) of the columbarium, crypt, grave, lot, mausoleum, niche, tomb, or vault; and
 3. If the columbarium, crypt, grave, lot, mausoleum, niche, tomb, or vault is occupied by remains or cremated remains:
 - a. The name, age, and sex of the deceased;
 - b. The date the remains were interred;
 - c. The name of the mortician, undertaker, or funeral director involved in the interment of remains, other than cremated remains; and
 - d. The date of interment.
- C. No person shall transfer any certificate without first making application to the Department and paying the transfer fee listed on the Department's Fee Schedule. Upon approval of a transfer, the Department will re-issue a certificate bearing the transferee's name as the proprietor. Proprietors of certificates may assign burials for deceased other than themselves without the requirement of the certificate being re-issued.
- D. All sales, issuances, conveyances, assignments, and transfers of certificates shall be by reference to the section, block, lot, row, niche, or other subdivision required in Boise City

Code section 13-04-08.A.

- E. A proprietor shall notify the Department of Parks and Recreation in writing of any change to his or her mailing address within ninety (90) days of such change.

13-04-08 CEMETERY MAINTENANCE AND CARE.

- A. Each cemetery shall be subdivided into section, blocks, lots, rows, niches, or other subdivisions as may be necessary to accurately describe, number, and record the sale, issuance, conveyance, assignment, or transfer of certificates.
- B. Boise City shall budget for and pay all costs of maintaining and caring for its cemeteries.
- C. Except as otherwise specifically provided herein, the Department shall be responsible and have charge of the grounds and buildings within each cemetery.
- D. Unless otherwise in keeping with its historic character or longstanding standard of care, every cemetery shall be maintained at a level equal to or exceeding that of a Boise City park, thereby preserving the dignity of Boise City's cemeteries and honoring those memorialized therein.
- E. The following general minimum landscaping maintenance standards of care shall be met:
 - 1. Cutting and trimming grass, inhibiting or removing weeds, raking and cleaning grounds, and pruning, replacing, or removing trees and shrubs at reasonable intervals, or as determined necessary based on the character and longstanding standard of care;
 - 2. Regularly collecting and disposing of all litter, trash, and garbage, and emptying all trash receptacles;
 - 3. Removing and disposing of wilted flowers from funeral displays or floral arrangements;
 - 4. Keeping all buildings, parking lots, cemetery roads, and pathways reasonably clear, accessible, and free of obstructions and debris;
 - 5. Repairing sunken grave markers, as needed; and
 - 6. Repairing and restoring improvements, structures, fences, and other items.

13-04-09 ABANDONED LOTS.

- A. This section is adopted pursuant to the authority granted by Idaho Code Section 27-304.
- B. There exists a presumption that a lot is abandoned when it remains unused for seventy-five

(75) years after the most recent valid and effective purchase, sale, acquisition, assignment, or transfer of the lot or of the certificate therein, unless any one (1) or more of the following rebutting conditions exist:

1. A proprietor holds more than one (1) certificate, and one (1) or more of the lots to which the certificates apply has been used for the interment of remains within the past seventy-five (75) years. In such a case, the date of the last interment shall mark the beginning of a new seventy-five (75) year period.
2. A memorial exists on the lot. (The Department reserves the right to relocate a memorial to an occupied lot to which the same proprietor holds a certificate, if it is determined that additional lots will be eligible for re-conveyance, pursuant to this chapter.)
3. Within ninety (90) days of the date of the last publication of the “Notice of Intent to Deem Lot Abandoned” pursuant to this section, a proprietor or his spouse, child, heir, assign, or next of kin:
 - a. Personally appears to assert or deliver proof of his or her status as the proprietor of the certificate applicable to the lot; or
 - b. Mails to the Department, by Certified Mail with return receipt requested, proof of his status as proprietor of the certificate.
4. Any fact, circumstance, or other evidence exists which, taken alone or as a whole, would cause a reasonable person to conclude it is more likely than not that the proprietor is entitled to maintain his right to burial in the lot.

C. Notice of Intent to Deem Lot Abandoned.

1. Upon a determination by the Department that ownership rights or a license to interment in a lot is presumed abandoned, and prior to a final determination of abandonment, the Department shall:
 - a. Send a “Notice of Intent to Deem Cemetery Burial Lot Abandoned” to the last known proprietor, his or her known heirs or assigns, and any known next of kin, by Certified Mail with return receipt requested, to the last known proprietor’s last known address;
 - b. Publish a “Notice of Intent to Deem Cemetery Burial Lot Abandoned” for three (3) consecutive weeks in the newspaper of general circulation in Ada County; and
 - c. Publish a “Notice of Intent to Deem Cemetery Burial Lot Abandoned” for three (3) consecutive weeks in the newspaper of general circulation in the county in which the last known proprietor’s last known address is located.

The requirements of subsections (b) and (c) herein may be fulfilled with a single three (3) week publication if the last known proprietor's last known address is located within Ada County, Idaho.

2. The "Notice of Intent to Deem Cemetery Burial Lot Abandoned" shall include, at a minimum, the following information:
 - a. The name of the last known proprietor;
 - b. The description of the lot(s) subject to a finding of abandonment;
 - c. A statement that the lot identified on the proprietor's certificate has not been used for the purpose of interment in the lot for at least seventy-five (75) years from the date of its acquisition or most recent transfer, whichever occurred last in time;
 - d. A statement that the proprietor's certificate applicable to the lot is not held in common ownership with any certificate applicable to a lot, pursuant to subsection B.1., above;
 - e. A statement that no marker or memorial exists on a lot, pursuant to subsection B.2. and B.3., above; and
 - f. A statement indicating Boise City's intention to deem the lot abandoned unless a proper claim is made within ninety (90) days of the date of the last publication of the "Notice of Intent to Deem Cemetery Burial Lot Abandoned."
- D. Unless the presumption of abandonment is rebutted, upon completion of the notice requirements contained herein, the ownership of a lot or certificate shall be deemed abandoned, the condition precedent to the possibility of reverter expressed in Section 13-04-05.A.3. shall be deemed to have occurred, and ownership of the certificate applicable to that lot shall escheat or revert to Boise City.
- E. If, within twenty-five (25) years following a determination of abandonment, any person establishes to the Department or to a court of competent jurisdiction that he would be entitled to the proprietor's rights if those rights had not escheated or reverted to Boise City as provided by this chapter, the Department shall, at no cost, convey to that person a certificate for an equivalent or similar lot within a cemetery. If no such certificate is desired, the proprietor or his heirs or assigns may recover the value paid to Boise City upon the sale of his certificate that was deemed abandoned, less an administrative fee not to exceed one hundred fifty dollars (\$150.00).
- F. Boise City shall set aside a number of lots equal to five percent (5%) of the number of lots deemed abandoned under this section. Any person who was the owner of a lot or the proprietor of a certificate that was deemed abandoned under this section shall have the right

to obtain a certificate identifying an equivalent or similar lot, pursuant to subsection E., above.

- G. Reversion or escheatment of a certificate represents a possibility of reverter in Boise City, and shall apply retroactively to all owners' and proprietors' rights related to any certificate or lot previously purchased or transferred within a cemetery.

13-04-10 DEPARTMENT AUTHORITY.

- A. The Department hereby is authorized to approve, adopt, promulgate, and publish such rules and regulations as are reasonably necessary to ensure the orderly and efficient administration, maintenance, operation, management, control, supervision, use, and regulation of all Boise City cemeteries, columbaria, crypts, graves, lots, mausoleums, niches, tombs, and vaults.
- B. All fees, rules, and regulations previously adopted by the Commission or the Department and approved or ratified by the City Council, if approval or ratification was required, that are now in effect hereby are re-affirmed, re-approved, and re-ratified, and shall remain in full force and effect until amended or repealed.
- C. No person shall violate any rule, regulation, or specification approved and adopted by the Department or by the City Council.

13-04-11 DAMAGE TO CEMETERY PROHIBITED.

No person shall remove, relocate, break, deface, destroy, or otherwise injure any marker, as that term is defined herein, or any tree, shrub, plan, vase, railing, gate, or other object, property, structure, article, or thing belonging to, placed, or erected on or in a cemetery, columbarium, crypt, grave, lot, mausoleum, niche, tomb, and vault.

13-04-12 VIOLATION A MISDEMEANOR; PENALTIES.

A person violating any provision of this chapter shall be deemed guilty of a general misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars (\$1000.00) or by imprisonment in the Ada County jail for not more than six (6) months, or by both such fine and imprisonment.

13-04-13 SEVERABILITY.

If any clause, sentence, paragraph, section, or any part of this chapter is declared or adjudged to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect, invalidate, or nullify the remainder of this chapter.