

**TOQUERVILLE CITY**  
**ORDINANCE 2021.24**



AN ORDINANCE OF THE CITY COUNCIL OF TOQUERVILLE, UTAH, AMENDING AND RESTATING CHAPTER 7 (CEMETERY) WITHIN TITLE 7 (PUBLIC WAYS AND PROPERTY) OF THE TOQUERVILLE CITY CODE TO BETTER REFINE THE RULES AND REGULATIONS GOVERNING CITY CEMETARIES INCLUDING MAKING PERPETUAL CARE FOR BURIAL PLOTS REQUIRED, TYING THE FEES CHARGED FOR CEMETARY SERVICES TO THE CITY'S UNIFORM FEE SCHEDULE AND REQUIRING THE PAYMENT OF THE PERPETUAL CARE FEE UPFRONT RATHER THAN IN INSTALLMENTS OVER TIME.

RECITALS

WHEREAS, Toquerville City ("City") is an incorporated municipality duly organized under the laws of the State of Utah;

WHEREAS, the City is authorized and required pursuant to Utah Code Annotated, Title 10, Chapter 9a, Section 501 to create and enforce regulations regarding the use of land within the City's municipal boundaries;

WHEREAS, pursuant to Utah Code Annotated, Title 10, Chapter 9a, Section 103 and Title 10, Chapter 3b, Section 301, the Toquerville City Council ("City Council") is designated as the governing and legislative body of the City;

WHEREAS, pursuant to Utah Code Annotated, Title 10, Chapter 8, Section 62, the City, by and thru the City Council may purchase, create, improve, manage and operate public burial and cemetery grounds as well as sell and convey burial plots and contract for the perpetual care and maintenance of the various burial plots within a cemetery.

WHEREAS, the City has determined that it is in the best interests of the health, safety and general welfare of the City to amend and restate all of Chapter 7 of Title 7 of the Toquerville City Code regarding the governance and operation of the City's cemeteries now in existence or which may be created in the future so as to better regulate the assessment of cemetery fees, the right to retain ownership of a burial plot and to better provide for the perpetual care of burial plots within the City's cemeteries.

ORDINANCE

NOW THEREFORE BE IT HEREBY ORDAINED by the City Council of Toquerville City, Utah, as follows:

1. AMENDMENT AND RESTATEMENT OF CHAPTER 7 (CEMETERY), TITLE 7 (PUBLIC WAYS & PROPERTY). Chapter 7 of Title 7 of the Toquerville City Code is hereby amended and restated in its entirety as follows:

**7-7-1: DEFINITIONS:**

*The following words or phrases shall have the following meanings, unless the context otherwise clearly requires:*



*CEMETERY: Any burial or cemetery ground located within, and owned/operated by, the City or a private party as permitted by the City.*

*PLOT: Shall include the area within a sectioned portion of a Cemetery suitable in size and dimensions for a grave or series of graves and as depicted in a Plat maintained by the Cemetery Superintendent with a copy kept in the Official Records of the City.*

*PLOT OWNER, GRAVE OWNER OR PURCHASER: The owner or purchaser of burial privileges or the collateral right of use of any burial Plot evidenced by a deed or burial right for a described Plot or by proved and recognized descent or devise from the original owner.*

**7-7-2: APPLICABILITY:**

*All Cemeteries, regardless of whether they are owned and/or maintained by the City or which may hereafter be acquired by the City, wherever situated, are hereby declared subject to the provisions of this Chapter.*

**7-7-3: CEMETERY SUPERINTENDENT:**

A. *Created: There is hereby created the position of Cemetery Superintendent.*

B. *Duties: The Cemetery Superintendent shall have the general supervision and administration of the Cemetery, including, but not limited to:*

1. *Recommending to the City Council such additional rules and regulations as may be necessary for the operation, maintenance, use and protection of the Cemetery.*

2. *Subdividing the Cemetery into Plots for gravesites.*

3. *Maintaining a record of the location of the graves and preventing any Plot from being used beyond its capacity.*

4. *Keeping in proper repair the enclosure around the Cemetery and preventing it being entered by noxious animals and, so far as practical, preventing the destruction or defacing of any tablet or marker placed or erected therein.*

5. *Keeping a duplicate plat of the cemetery and, at the request of any person wishing to purchase any of the Plots or parts of Plots, pointing out any of the Plots or parts of Plots for sale; and, upon disposal of any Plots or part thereof, notifying the City Recorder of such fact. The City Recorder shall, after payment of the purchase price for the Plot has been received by the City Treasurer, issue a certificate of burial rights, which shall describe the Plot to which the right to burial is granted. The certificate shall be signed by the Cemetery Superintendent and the City Recorder.*



6. *Opening any graves in the Cemetery upon application to him being made by the City Recorder or by any person having the right to make such application and being responsible for closing all graves.*

7. *Removing of floral pieces or displays left on any grave as deemed necessary to the appearance of the Cemetery. All floral pieces and decorations not permanently attached to the headstone shall be removed at the end of every quarter and one week after every holiday.*

8. *Keeping the streets, alleys, walks and avenues in the cemetery in good order and unobstructed.*

9. *Erecting a suitable marker firmly set upon the northwest corner of each lot section, with the number of the plot inscribed thereon and which location shall be shown on the cemetery records.*

#### **7-7-4: FEES AND CHARGES:**

A. *Collection of Fees: The City Recorder, and such other persons as the City Council may designate, are hereby authorized and required to collect prices and fees for the opening and closing of graves or other services which shall include, but not be limited to, properly disinterring bodies and properly restoring the earth and grounds, recording each burial, disinterment or removal, and raised monument privileges. The fees shall be such amounts as are determined by the City Council (with input from the Cemetery Superintendent) from time to time as listed on the City's Uniform Fee Schedule.*

B. *Fee to be Paid For Opening Grave: No grave shall be opened in the city cemetery until payment of a fee for the labor and expense in so opening the grave shall be paid. The presentation of a receipt from the City Recorder or person designated by the City Council when presented to the Cemetery Superintendent, shall be authority to open a grave for the burial of a deceased person.*

C. *Purchase Price and Fees: The City Council shall from time to time fix the size of Plots, the price at which burial rights shall be sold and the fees which shall be charged for the various cemetery services to be provided as listed on the City's Uniform Fee Schedule.*

#### **7-7-5: SALE OF PLOTS:**

A. *Procedure For Sale of Plots:*

1. *The City Recorder, and such other person as the City Council may designate, are hereby authorized to sell the use of Plots in a Cemetery owned by the City for burial purposes only and to collect all sums arising from the sale. The City Recorder shall keep a complete record of all sales, which record shall describe the location of the Plot purchased and the price paid therefor. The City Recorder or designated person shall deliver to each*



*purchaser a certificate of burial rights for each Plot purchased, which certificate shall, among other things, describe the location of the Plot and the purchase price*

2. *A certificate and rights to burial shall be exempt from execution, taxation or assessment for care and maintenance from and after full payment of the purchase price.*

3. *“Perpetual Care” also known as prepaid continued maintenance shall be deemed to include the filling of the grave, the placing of topsoil upon the grave, seeding the grave with grass, and watering and cutting the grass. No other services are included.*

4. *No other improvements, changes or service, except Perpetual Care, shall be made on any Plot without the certificate holder or his heirs first submitting to and receiving from the Cemetery Superintendent, written approval for such improvements, changes or services, which improvements, changes or services shall be subject to the rules and regulations promulgated by the City Council.*

**B. Restrictions Of Resale:**

1. *From and after January 1, 1978, the Plots sold by the City shall not be further sold, transferred, conveyed or assigned to any person, except the City. The City hereby agrees to buy back any Plot which it may hereafter sell. The repurchase of such Plots shall be for the original price paid by the purchaser, or the current selling price of the Plot, whichever is less.*

2. *Whenever a certificate to burial rights or Plot reverts to the City, as provided for in this subsection, or becomes vested in the City for any reason, before new certificates are issued, the original certificate shall be canceled or an assignment given, and the record shall be so changed.*

3. *The certificate to burial rights shall be issued and signed by the Cemetery Superintendent and shall be attested by the City Recorder. All Plots or parts of Plots, as provided in this subsection, together with all improvements, shall be exempt from execution and from taxation and assessment for care and maintenance charges from and after said payment.*

C. *Unused Plots: If a Plot or Plots remain unused after 60 years from date of purchase, the City may initiate procedures in compliance with Chapter 5, Title 8 of the Utah Code Ann. to reclaim burial rights previously granted on a Plot.*

**7-7-6: REGULATION OF CEMETERY AND BURIALS:**

A. *Burials: Before any deceased person is buried in a Cemetery within the City, a death certificate properly issued by the Utah Bureau of Vital Statistics shall be required by the Cemetery Superintendent. After burial, the Cemetery*



*Superintendent shall endorse upon the permit a description of the location where the deceased is buried and shall enter all of the information contained in the permit in the Cemetery records.*

*B. Burial Permit Required: It shall be unlawful for any person to bury the body of a deceased person in a Cemetery within the City without first obtaining a certificate of burial right for the Plot used or producing satisfactory evidence of a right to burial based on a properly acquired certificate of burial right.*

*C. Registration Of Burials: Before any deceased person may be buried in a cemetery within the City, the relatives or person having charge of the deceased shall provide the City Recorder with a written statement which shall be filed by the City Recorder, which statement shall contain, if known, information about the deceased regarding his or her name, when and where born, the date and cause of death, the name of the attending physician, date of burial, name of cemetery and the description of the location of the grave.*

*D. Burials and Disinterment:*

*1. It is a Class B misdemeanor, subject to penalty as provided in Section 1-4-1 of the Toquerville City Code, for any person to:*

*a. Disinter any body buried in any cemetery, except under the direction of the Cemetery Superintendent who shall, before disinterment, require written permission from both the Southwest Health Department and the owner of the Plot, or his or her heirs, which written authorization shall be filed and preserved in a record kept for such purposes.*

*b. Disinter or remove the body of a person who has died from a contagious disease within two (2) years after the date of burial, unless the body was buried in a hermetically sealed casket or vault and is found to be so incased at the time of disinterment.*

*2. It is a Class B Misdemeanor, subject to penalty as provided in section 1-4-1 of the Toquerville City Code, to inter anything other than the remains of human bodies in a Cemetery located within the City.*

*3. It is a Class B Misdemeanor, subject to penalty as provided in section 1-4-1 of the Toquerville City Code, to bury the body of any person within the municipal boundaries of the City except in a Cemetery, unless by special permission of the City Council under such rules and regulations that it may prescribe.*

*Cremations:*

*1. Any single Plot within the Cemetery may occupy up to three (3) cremation urns. Urns must be placed in an urn burial vault. Urn burials*



*shall include a placard on the surface above the urn denoting name, birth and death dates of deceased person.*

2. *Burials eligible with a casket and urn(s) are permitted only in areas of a Cemetery designated by the Cemetery Superintendent in the Cemetery Plat, subject to the following restrictions:*

a. *A casket cannot be placed above an urn.*

b. *If an urn is the first, by date, to be placed in a Plot, then there can be no casket interred at a later date.*

c. *Urn burials must comply with the limitations set forth in Subsection E.1., above.*

d. *Urn placement is subject to approval by Cemetery Superintendent.*

3. *Scattering cremation ashes on a purchased cemetery plot is permitted subject to the approval of the Cemetery Superintendent and placement of identification marker.*

F. *Vaults Required:*

1. *Unless in writing waived by the Cemetery Superintendent, it shall be unlawful for any person to lie buried in the cemetery unless the casket or urn shall be placed in a vault made of concrete, fiberglass, steel or brick lined, or of such other material approved by the City Council, substantially constructed and covered with a similar durable material.*

2. *No wood shall be used as a permanent part of the construction of any part of the vault.*

G. *Religious and Fraternal Organizations: The City may contract with religious and fraternal organizations to designate a reasonable portion of the Cemetery in which burials may be restricted to members of such religious and fraternal organizations and their families.*

H. *Sale Subject To Rules: Every Plot sold is subject to rules and regulations that have been or may be adopted. The rules and regulations shall be subject to such changes as are found necessary for the protection of Plot owners, the remains of the dead and the preservation of the Cemetery as determined by the City Council, with input from the Cemetery Superintendent.*

I. *Care Reserved: The City reserves the right to enter upon any Plot or gravesite and to perform all work necessary for the care and upkeep of all Plots and graves in its Cemeteries.*



*J. Orders and Responsibilities For Errors: Under no circumstances will the City assume responsibilities for errors in opening graves when orders are not given in person with City staff or the Cemetery Superintendent having the ability to ask questions and verify the accuracy and content of the request.*

*K. Traffic Rules:*

*1. The provisions of the City traffic ordinances relative to the operation of vehicles and conduct of pedestrians shall be in effect in the cemetery, except as herein otherwise modified by this chapter.*

*2. It shall be unlawful for any person to ride or drive within a Cemetery owned by the City at a speed greater than five (5) miles per hour.*

*L. Children: Children under the age of eight (8) years shall not be allowed in Cemeteries unless accompanied by their parents or other adults, except for the purposes of attending authorized funerals or, in the company of adults, placing flowers on the grave of a deceased relative or friend, or performing any other customary evidence of respect in accordance with their religious principles.*

*M. Animals Prohibited: No animal shall be allowed in any cemetery, except in the confines of a vehicle and must be at all times retained within the confines of said vehicle while the vehicle remains in the cemetery.*

*N. Decorum: Cemetery grounds are sacredly devoted to the interment and repose of the dead. Strict observance of decorum due such a place shall be required of all persons.*

*O. Injury To Cemetery Property Prohibited:*

*1. It is a Class B Misdemeanor, subject to penalty as provided in Section 1-4-1 of the Toquerville City Code, for any person to tie or attempt to tie any horse, animal or motor vehicle to any monument, gravestone, tablet, marker, tree, shrub, fence or enclosure on the premises of Cemetery for the purpose of injuring, defacing or attempting the removal of same.*

*2. It is a Class B Misdemeanor, subject to penalty as provided in Section 1-4-1 of the Toquerville City Code, for any person to injure, deface, break, destroy or remove any headstone, tombstone, monument, tree, shrub or any other property in a Cemetery*

*3. It is an infraction, subject to penalty as provided in Section 1-4-1 of the Toquerville City Code, for any person to erect or maintain any fence, corner post, bench on which to sit, coping or boundary of any kind, to plant any vegetation upon any Plot or Plots, street, alley or walk in the Cemetery, or to grade the ground or land thereof. The Cemetery Superintendent shall, whenever required, furnish the true lines of any Plots according to official*



*Cemetery plat and corresponding survey, shall prevent and prohibit any markings of the same, except by official landmarks, and shall prevent and prohibit any grading thereof that might destroy or interfere with the general slope of the land. Any person who desires to install a cane for decorations, must do so within the cement footprint of the headstone. Upon written request, the Toquerville City representative will drill up to two (2) holes in said cement footprint for such installation. Where there is no existing footprint, application may be made through the City, and under the direction of the Cemetery Superintendent, who will install an eight inch (8") to twelve inch (12") cement border around the headstone at the applicant's expense for such materials and labor.*

*P. Placement of Markers:*

*1. It shall be unlawful for any person to erect, place or cause to be placed any marker or monument on any Plot in the Cemetery in violation of the rules and regulations promulgated by the City Council regarding the placement, construction and design of all such markers.*

*2. All headstones or markers must have a concrete border eight inches (8") to twelve inches (12") wide.*

*3. No monument in the Cemetery will be more than three feet (3') high, two feet (2') deep and four feet (4') wide.*

*Q. Additional Rules And Regulations:*

*1. The City Council may promulgate by ordinance such additional rules and regulations concerning the care, use, operation and maintenance of the Cemetery as it shall deem necessary.*

*2. The Cemetery Superintendent may, from time to time as the City Council deems necessary, direct and publish a booklet of rules and regulations for the convenience of the purchasers of Plots in City owned Cemeteries. Such rules and regulations shall constitute a part of the terms and conditions under which owners and users may utilize the Cemetery and shall form a supplement to this Chapter after they have been adopted as official by ordinance of the City Council.*

**7-7-7: PERPETUAL CARE:**

*A. Contracting For Perpetual Care: No grave shall be hereafter opened in a Cemetery owned by the City until the Perpetual Care Fee associated with the Plot where the grave is to be opened shall have been paid in full.*

*B. Scope of Perpetual Care: The essential Perpetual Care that the City agrees to give shall consist of care of the Cemetery generally, and shall include, but is not limited to, mowing of all Plots and graves at reasonable intervals, resodding, seeding and filling in sunken graves, sodding the surface of the graves to Plot level,*





*removing dead flowers and trimming trees and shrubbery when necessary, raking and cleaning the Plots and straightening of tilting stones or markers, but shall not include repairing or replacing markers or memorial structures of any nature, except when the need for repair or replacement is directly caused by the City.*

**C. Perpetual Care Fund:**

*1. There hereby is established a Perpetual Care fund according to the laws of the State of Utah and this chapter. All funds received from the sale of perpetual care services shall be placed in a special perpetual care fund, invested in compliance with the laws of the State and used for the purposes herein provided.*

*2. The income from the Perpetual Care fund shall be used to pay the upkeep and development of the City's Cemeteries. The City may borrow from the fund from time to time, but any funds borrowed shall be repaid to the fund with interest thereon at the prevailing rate paid by the City to borrow funds from commercial lenders.*

*3. If the City borrows from the fund, it shall pay into a fund for the operation of the City's Cemeteries the interest accrued upon money annually. Should it be found that the interest returned upon the Perpetual Care funds shall be more than is required to pay for the operation and upkeep of the City's Cemeteries, then the surplus shall be added to the principal amount of the Perpetual Care fund herein created, and shall be so handled until changed by resolution to provide for the use of such accumulated interest.*

**D. Duties of the City Treasurer:** *It shall be the duty of the City Treasurer to keep an accurate record of the Perpetual Care fund account, including investments, to see that the principal portion thereof is properly invested in accordance with resolutions of the City Council and the laws of the State of Utah, and to advise the Mayor or City Manager when funds are available for investment in the amount of one thousand dollars (\$1,000.00) or more. The Mayor or City Manager shall advise the City Council of the availability of such funds.*

**E. Duties of the City Council:** *It shall be the duty of the City Council, when funds are available for investment, to direct by resolution all purchases of securities for the perpetual care fund or to name a suitable trustee for such investment.*

**F. Income:** *All income from investments held in the Perpetual Care Fund shall be quarterly credited to the Cemetery Maintenance Fund for use in providing the Perpetual Care as required herein.*

**7-7-8: BURIAL OF INDIGENTS:**



A. *The City Council may by resolution designate a portion of any of the City's Cemeteries to the burial of indigents. Whenever it is made to appear to the Mayor by proof submitted to him by the City Recorder that any person who has died does not have an estate sufficient to pay the purchase price of a Plot in one of the City's Cemeteries, and that the nearest relative or representative of such deceased person who is a resident of the City desires to have the body of such deceased interred in a City owned Cemetery, the Mayor may grant burial space for such deceased person.*

B. *The Mayor shall communicate his decision to both the City Recorder and the Cemetery Superintendent. The Mayor shall give report of his decision, whether affirmative or negative, to the City Council at its next regular meeting.*

2. **REPEALER.** This Ordinance shall repeal and supersede all prior ordinances and resolutions governing the same.

3. **SAVINGS CLAUSE:** If any provision or clause in this Ordinance or the application thereof to any person or entity or circumstance is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other sections, provisions, clauses, or applications hereof which can be implemented without the invalid provision, clause, or application hereof, and to this end the provisions and clauses of this Ordinance are declared to be severable.

4. **EFFECTIVE DATE.** This Ordinance shall take effect immediately upon approval by the City Council.

PASSED AND APPROVED THIS 20<sup>th</sup> DAY OF October, 2021.

John 'Chuck' Williams	Aye <input checked="" type="checkbox"/> Nay <input type="checkbox"/> Absent/Abstain <input type="checkbox"/>
Keen Ellsworth	Aye <input type="checkbox"/> Nay <input type="checkbox"/> Absent/Abstain <input checked="" type="checkbox"/>
Justin Sip	Aye <input checked="" type="checkbox"/> Nay <input type="checkbox"/> Absent/Abstain <input type="checkbox"/>
Gary Chaves	Aye <input checked="" type="checkbox"/> Nay <input type="checkbox"/> Absent/Abstain <input type="checkbox"/>
Ty Bringhurst	Aye <input checked="" type="checkbox"/> Nay <input type="checkbox"/> Absent/Abstain <input type="checkbox"/>

TOQUERVILLE CITY  
a Utah Municipal Corporation

  
\_\_\_\_\_  
Lynn Chamberlain, Mayor

10/26/2021  
\_\_\_\_\_  
Date

Attest:

  
\_\_\_\_\_  
Ruth Evans, City Recorder

