

TOWN OF JOHNSTOWN, COLORADO

ORDINANCE NO. 2020-188

AN ORDINANCE REPEALING AND READOPTING ARTICLE VI OF CHAPTER 11 OF THE JOHNSTOWN MUNICIPAL CODE CONCERNING THE JOHNSTOWN CEMETERY

WHEREAS, the Town of Johnstown, Colorado is a municipal corporation duly organized and existing under its Home Rule Charter adopted pursuant to Article XX of the Constitution of the State of Colorado; and

WHEREAS, the Town Council is vested with authority to administer the affairs of the Town; and

WHEREAS, Article VI of Chapter 11 of the Johnstown Municipal Code (“Code”) concerns the Johnstown Cemetery; and

WHEREAS, the Town Manager, Town Clerk and Town Public Works Director recommend that Article VI of Chapter 11 of the Code be revised to: (i) reflect new policies and procedures and (ii) omit reference to the amount of the Town’s fees and, rather, provide that such fees shall be adopted by resolution of Town Council as set forth in the Town Fee Schedule; and

WHEREAS, based on the recommendations of Town staff, Town Council desires to repeal and readopt Article VI of Chapter 11 of the Code; and

WHEREAS, the Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town, that it is promulgated for the preservation of the public health, welfare, peace, safety and property and that this Ordinance is in the best interests of the citizens of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO, AS FOLLOWS:

Section 1. Repeal and Readoption of Article VI of Chapter 11. Article VI of Chapter 11 of the Johnstown Municipal Code is hereby be repealed in its entirety and readopted to read as follows in its entirety:

ARTICLE VI - Cemetery

Sec. 11-101. - Definitions

For purposes of this Article, the following definitions apply:

Burial memorial shall mean any type of gravestone, tombstone, headstone, memorial, monument, or marker that commemorates the permanent disposition of the remains of a human body either below or above the surface of the ground.

Burial space shall mean a grave space or a niche, as appropriate.

Cemetery shall mean the Johnstown Cemetery.

Columbarium shall mean a vault with niches for urns containing the ashes of cremated bodies.

Grave space shall mean a single space within a platted lot designed for the interment of one body.

Lot shall mean a platted lot within the cemetery and may consist of more than one grave space.

Niche shall mean a location within the columbarium vault designed to hold an urn containing the ashes of a cremated body.

Owner shall mean the person with the right to interment in a burial space.

Purchaser shall mean the purchaser of a burial space.

Sec. 11-102. – Administration by Town Manager.

The Town Manager is hereby delegated the authority to administer the provisions of this Article. Among other duties and obligations, the Town Manager shall supervise the care and maintenance of the cemetery, keep a map of the cemetery and maintain the records of the cemetery. Subject to the limitations of this Code, the Town Manager may delegate the administration of this Article, or any part thereof, to duly qualified employees and agents of the Town.

Sec. 11-103. - Rules and regulations.

The Town Manager shall adopt rules and regulations not inconsistent with the provisions of this Article governing the cemetery. Such rules and regulations shall be on file and available for public examination in the office of the Town Clerk. The failure to comply with any rule or regulation promulgated under this Article, as such rules and regulations may be amended from time to time, shall be deemed a violation of the Code.

Sec. 11-104. – Application for burial space.

The Town shall require an application for all burial spaces. The application shall contain a description of the grave space or niche, the purchase price and the method of payment. At the time of application, the Town Clerk shall provide the applicant with, or direct the applicant to the location of, the rules and regulations then in effect. When executed by the applicant and the Town, the application shall become a binding contract of purchase and sale.

Sec. 11-105. – Interment agreement; no title to real property.

- (1) Upon payment of the full purchase price to the Town, the Town shall issue an interment agreement, signed by the Town Manager or the Town Clerk, conveying the right of interment for the designated burial space, subject to this Article and the rules and regulations adopted by the Town Manager.
- (2) The interment agreement shall contain contact information for the owner of the burial space with the right to interment, and if a different person, contact information for the purchaser of the burial space.

- (3) For grave spaces, the interment agreement shall contain the block and lot number. For niches, the interment agreement shall contain the description and location within the columbarium.
- (4) Interment agreements issued prior to January 1, 2021, or other similar instruments issued by the Town for a burial space in the cemetery, shall remain valid and binding obligations of the Town.
- (5) The interment agreement, or any instrument issued by the Town for a burial space in the cemetery, of whatever form, grants interment rights only and does not convey title to real property.

Sec. 11-106. – Price of burial spaces.

The Town Council shall establish the price of burial spaces by resolution and set forth such amount in the Town Fee Schedule. The price may differ for resident and non-resident use of burial spaces.

Sec. 11-107. – Cemetery funds.

- (1) Fifteen percent (15%) of the monies and proceeds derived from the sale of burial spaces shall be deposited and carried in the Cemetery Perpetual Care Fund. All other monies and proceeds derived from the sale of burial spaces, all other revenue derived from the operation of the cemetery from any source and the earnings received from investment of the Cemetery Perpetual Care Funds shall be deposited and carried in the Parks and Open Space Fund.
- (2) The Cemetery Perpetual Care Fund and the entire principal thereof shall be safely and perpetually kept and invested. It shall be invested in such securities as under state law are approved for investment of municipal funds. The interest and income therefrom may be used for cemetery maintenance. The principal shall only be used for major improvements or maintenance projects of the cemetery.
- (3) All disbursements made for or on account of the cemetery shall be paid out of the Parks and Open Space Fund.

Sec. 11-108. – Transfer of burial space; prohibited sale of burial space.

- (1) A burial space, or interest in the cemetery, may not be transferred, assigned or conveyed without the prior written consent of the Town. The Town shall not consent to the transfer, assignment or conveyance of any burial space or interest in the cemetery upon which there is any indebtedness due the Town.
- (2) Burial spaces may not be sold to a funeral director or to any other persons for the purpose of resale or speculation.

Sec. 11-109. – Use of burial space.

- (1) For burial spaces purchased after January 1, 2021, the owner shall be entitled to use of the burial space, unless:
 - (a) The purchaser, prior to use by the owner, provides a written, notarized request to the Town requesting that the burial space be transferred or assigned to a different person. If

such request is granted by the Town, the Town shall void the existing interment agreement and issue a new interment agreement; or

- (b) The purchaser is deceased and the owner provides a written, notarized request to the Town requesting that the burial space be transferred or assigned to a different person.
- (2) For burial spaces purchased prior to January 1, 2021, the Town shall conclusively presume that the purchaser, the purchaser's spouse or the purchaser's children are entitled to use the burial space, unless, upon purchase, the purchaser designated the right of interment to a specific person or the purchaser, if not deceased, otherwise directs the Town by written, notarized notification.
- (3) To the extent necessary to determine the use of a burial space, the Town may rely on the representations of family members or authorized persons, and shall not be liable for decisions made related to the use of the burial space.

Sec. 11-110. – Abandonment of burial space; right to reclaim.

A burial space shall be deemed abandoned, and the Town shall have a right to reclaim the burial space, as provided in § 6-24-112, C.R.S., as amended.

Sec. 11-111. – Indigent and welfare cases.

When a request is made to inter a person with insufficient funds to cover the expenses, the Town shall work within the expense allowance granted by the Colorado Department of Social Services. Burial spaces for such persons shall be restricted to the southeast corner of the cemetery in Block No. 4.

Sec. 11-112. – Burial memorials.

All burial memorials shall be governed by the rules and regulations of the cemetery.

Sec. 11-113. – Perpetual care.

All burial spaces in the Town cemetery shall be perpetually cared for by the Town.

Sec. 11-114. – Cemetery fees.

Cemetery fees shall be adopted by resolution of Town Council and set forth in the Town Fee Schedule.

Sec. 11-115. – Cemetery committee.

The Town may designate a cemetery committee to act in an advisory capacity regarding the operations and maintenance of the cemetery. If a cemetery committee is established or convened, the cemetery committee shall provide recommendations and proposals to the Town, as requested.

Sec. 11-116. – Acts prohibited within cemetery.

No person in the cemetery shall:

- (1) Loiter upon the grounds;

- (2) Be under the age of fifteen (15) unless accompanied by an adult or other proper caretaker;
- (3) Drive an automobile or other vehicle in excess of 10 miles per hour or in excess of such lesser speed as is prudent under the existing conditions and circumstances;
- (4) Except for authorized personnel, drive or ride any automobile, motorcycle, all-terrain vehicle, machine or animal on lots, grass or walks;
- (5) Except for authorized personnel, drive any commercial truck or other commercial vehicle;
- (6) Discard trash, debris or other unsightly items, except in receptacles designated for such items;
- (7) Direct or cause Town employees to perform work without an order from the Town Manager or the Town Manager's designee;
- (8) Perform work on the grounds, except by permission of the Town Manager or the Town Manger Manager's designee;
- (9) Take any animal or permit any animal to be taken into the cemetery except service animals;
- (10) Deface, damage, destroy or injure any burial memorials or property in the cemetery;
- (11) Peddle flowers or plants or any other commodity; or
- (12) Except for authorized persons, make a change to the inscription on a burial memorial.

Sec. 11-117. – Violation; penalty.

Any person violating any provision of this Article shall be deemed guilty of an offense and upon conviction thereof shall be penalized as provided in Article IV of Chapter 1 of the Code. All persons doing damage to burial spaces, burial memorials or other property in the cemetery shall be liable to the Town and to the owner of the property damaged for such damage.

Section 2. Severability. If any part or provision of this Ordinance, or its application to any person or circumstance, is adjudged to be invalid or unenforceable, the invalidity or unenforceability of such part, provision, or application shall not affect any of the remaining parts, provisions or applications of this Ordinance that can be given effect without the invalid provision, part or application, and to this end the provisions and parts of this Ordinance are declared to be severable.

Section 3. Code revisions. Minor changes such as the format and other changes to unify the revised Code may be necessary. The Town Clerk is hereby authorized to make such changes, provided that neither the intent nor substantive content will be altered by such changes.

Section 4. Publication; Effective Date. This Ordinance, after its passage on final reading, shall be numbered, recorded, published and posted as required by the Town's Home Rule Charter and the adoption, posting and publication shall be authenticated by the signature of the Mayor and the Town Clerk and by the Certificate of Publication. This Ordinance shall become effective upon final passage as provided by the Home Rule Charter of the Town of Johnstown, Colorado. Copies of the entire Ordinance shall be available at the office of the Town Clerk.

INTRODUCED, AND APPROVED on first reading by the Town Council of the Town of Johnstown, Colorado, this ____ day of _____, 2020.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: _____
Diana Seele, Town Clerk

By: _____
Gary Lebsack, Mayor

PASSED UPON FINAL APPROVAL AND ADOPTED on second reading by the Town Council of the Town of Johnstown, Colorado, this ____ day of _____, 2020.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: _____
Diana Seele, Town Clerk

By: _____
Gary Lebsack, Mayor