

EUREKA CEMETERY & MAUSOLEUM ASSOCIATION

This facility is licensed & regulated by the Oregon Mortuary and Cemetery Board (971) 673-1500



*Historical ~ Pioneer
Since 1879*

1101 NE Yaquina Heights Dr.
PO Box 1762
Newport, OR 97365-0128
Phone: (541) 265-7282
Fax: (541) 265-8650
Email: ecaor@outlook.com
www.EurekaCemetery.org

AMENDED AND RESTATED BYLAWS

OF

EUREKA CEMETERY & MAUSOLEUM ASSOCIATION

PREAMBLE: It is the intent of Eureka Cemetery & Mausoleum Association to be at all times, in compliance with all laws, rules, and regulations made by any official body having the authority to make same. Under Oregon State Revised Statute 97.710, Eureka Cemetery and Mausoleum Association (ECA) adopts by reference Oregon Revised Statute (ORS) Chapter 65 – Non-Profit Corporations, and ORS Chapter 67 – Rights and Duties Relating to Cemeteries, Human Bodies and Anatomical Gifts, as they now exist or are modified in the future. Wherever a conflict appears between ORS Chapter 65, and/or ORS Chapter 67, and/or these Bylaws, the stronger wording will apply.

ARTICLE ONE – CORPORATE POWERS

Section 1: MEMBERSHIP QUALIFICATION: The Cemetery's members shall consist of those Persons who hold by purchase or descent one or more burial spaces, crypts or lots ("burial Property") within the cemetery.

Section 2: MEETINGS OF MEMBERS: Meetings of the members shall be held at the registered Office of the Cemetery, or at such other place as shall be designated in the notice of meeting.

- A. An annual meeting of the members shall be held within the first 10 days of June of each year at a specific time and place established by the board of directors for the purpose of electing directors, considering reports of affairs of the Cemetery, and transacting such other business as may properly be brought before the meeting.
- B. The Cemetery may hold special meetings of members at a time and place designated by the board of directors on call of the board of directors.

Section 3: NOTICE OF MEETINGS: The Cemetery shall notify members of each annual and special meeting of members by posting a notice for two weeks in three public places within the cemetery or in the vicinity of the Cemetery. Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called and only business within the purpose or purposes described in the notice may be conducted at a special meeting.

Section 4: VOTING RIGHTS: The record date to determine members entitled to notice of and to vote shall be fixed by the Board of Directors. Each member shall be entitled to one vote. Where burial spaces are owned by two or more members jointly, the joint owners shall be entitled to only one vote. A member may vote either in person or by written proxy. No proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the

proxy.

Section 5: ANNUAL MEETING QUORUM: The members present at a duly called meeting of members shall constitute a quorum.

- A. When a quorum is present or represented at any meeting, the vote of a majority of members present, in person or by proxy, shall decide any question brought before such meeting. Unless the question is one upon which, by express provision of the Oregon Nonprofit Corporation Act on the articles of incorporation, a different vote is required. In which case, such express provision shall govern and control the decision of such question.
- B. A majority of members present in person or by proxy may adjourn the meeting to a different time and place without further notice to members provided the new time and place is announced at the meeting prior to adjournment. At any adjourned meeting at which a quorum is present, any business may be transacted that might have been transacted at the meeting originally held.

ARTICLE THREE – OFFICERS

Section 1: OFFICERS: The principal officers at the Cemetery shall be the President, Vice-President, Secretary, and Treasurer. Each of whom shall be elected by the board of directors. Officers are not required to be members of the association. Such other officers and assistant officers as may be deemed necessary may be elected or appointed by the Board of Directors. The officers shall be elected at the annual meeting of the board held immediately following the annual meeting of members. Each officer shall hold office until his or her successor has been duly elected and qualified, or until death or resignation, or until the officer has been removed from office. An officer, or the general manager may be removed by majority vote of the board of directors present at the meeting whenever, in its judgment, the best interest of the Cemetery will be served thereby.

FILLING OF VACANCIES: Any officer vacancy occurring may be filled by a majority vote of the board of directors present at the meeting. An officer elected to fill a vacancy in this manor shall be elected for the un-expired portion of the term of the officer's predecessor in office.

See majority vote as described in Section 10.

Section 2: PRESIDENT

The President is the senior volunteer leader of Eureka Cemetery & Mausoleum Association (ECA) and serves at the order of the Board and the membership. The President is the Chair of both the Board of Directors and the Executive Committee. The President has general supervision of all business and affairs of the Association and gives direction and inertia to the formulation and achievement of the Associations philosophy, mission, and strategy, and goals. The President assures that the Association is making timely progress toward the fulfillment of its strategic plan.

As Chair of the Board of Directors, the President ensures that the Board of Directors fulfills its responsibilities for the governance of ECA and implementation of its policies and procedures. The President is the main liaison between the Board and the manager of the Association and works in partnership with the manager to help achieve the mission of ECA.

The President serves as the primary spokesperson for the Association. The president may sign with the secretary all legal instruments which the board of directors has authorized to be

executed, except in cases where the signing thereof shall be expressly delegated by the board of directors to some other agent or officer of the Cemetery.

Key Responsibilities

The President will perform the following duties and responsibilities in addition to those duties, relationships, requirements, and expectations delineated in the position description for Board of Directors and Board Member:

- Represent the Association and its members to other organizations, the industry, government and public agencies, the media, and the public
- Develop relationships with key senior executives throughout the business community to maximize the awareness of ECA's value and to maintain and increase sponsorship opportunities
- Preside at all meetings of the Members of the Association, the Board of Directors, and the Executive Committee
- Ensure decisions are made in a timely manner and then translated in to meaningful actions holding appropriate parties accountable for success
- Work with the Officers, committee chairs, board members, and manager to develop agendas for meetings of the Board of Directors and Executive Committee
- Appoint all committee and task force chairs, except where otherwise stated in the Bylaws
- Reflect any serious concerns the President has in regard to the role of the Board of Directors or individual Board members
- Reflect to the Manager the concerns of the Board of Directors and other constituencies
- Facilitate accomplishment of the Association's strategic goals and objectives
- Present to the Board of Directors an evaluation of the pace, direction, and organizational strength of the Association
- Serve as the principal contact with the Manager and staff to provide direction
- Establish annual performance objectives for the Manager and prepare and conduct the annual performance review of the Manager
- Train and prepare the President-elect for the responsibilities of the presidency and establish specific objectives and areas of focus for the President-elect

Section 3: VICE-PRESIDENT: The Vice-President will have all of the powers and perform all of the duties of the President during the absence or disability of the President, and do and perform such other duties as may be required from time to time by the board.

Section 4: SECRETARY: The Secretary, either personally or with the assistance of others, will keep the minutes and records of all of the meetings of the Board of Directors and other official business of the Board; will have the power, together with the President, to sign all bonds (in which case such signature may, to the extent permitted by law, be by facsimile); the Secretary will give notice of meetings as required by law and perform such other duties as may be required from time to time by the Board.

Section 5: **TREASURER:** The Treasurer will, either personally, or with the assistance of others, receive all monies and funds of the ECA and deposit the same in the bank or banks designated by the Board and in the name and to the account of the ECA; will keep full and accurate books of account and will make such reports of such official transactions of the finances of the ECA as may from time to time be required by the Board; and will perform such other duties as may be required by the Board.

Section 6: **NUMBER OF DIRECTORS AND ELECTION THEREOF:** The board of Directors shall consist of not less than five or more than nine Directors. A director is not required to be a member of the association. An employee of the Cemetery shall not be eligible to serve on the board of directors, unless voted to do so by a quorum of the Directors. The directors shall be elected at the annual meeting of members,

- A. The directors shall be staggered by yearly terms. The terms to be composed of one year, two year and three year terms.
- B. Terms for President, Vice President and Secretary-Treasurer shall be for two years
- C. The President may be re-elected for a second term but shall not serve more than two terms in any five-year period.
- D. The officers and directors shall be elected for each of their terms at the annual membership meeting and shall serve until their successor is elected and qualified.
- E. Directors may not be related to employees of the cemetery in any way.

Section 7: **FILLING OF VACANCIES:** Any vacancy occurring on the board of directors may be filled by a majority vote of the remaining board of directors. A director elected to fill a vacancy in this manor shall be elected for the un-expired portion of the term of the director's predecessor in office.

Section 8: **POWERS OF THE BOARD OF DIRECTORS:** All corporate powers shall be exercised by or under the authority of the Board of Directors which shall manage the affairs of the Cemetery subject to any limitations set forth in the articles of incorporation, the Bylaws and the Oregon Nonprofit act (the "Act"). The Board of Directors, with the counsel, advice and assistance of the General Manager shall:

- A. Make, enforce, and amend Cemetery rules and regulations as provided in ORS 97.710.
- B. Maintain a record of all remains interred or cremated at the Cemetery.
- C. Maintain a record of members owning burial property within the Cemetery.
- D. Operate the endowment portion of the Cemetery as an endowment care Cemetery as Provided in ORS 97.810: and,
- E. Engage a certified public accountant to review or audit the books, operations and financial records of the Cemetery each fiscal year. The board of directors shall determine the scope of the accountant's employment.

Section 9: **MEETINGS:** Regular or special meetings of the board of directors may be held either within or without the State of Oregon.

- A. The first meeting of each newly elected Board of Directors shall be held immediately following close of the annual meeting of members. No public notice of such meeting shall

be necessary to legally constitute the meeting, provided a quorum is present. The board may convene at such time and place as shall be fixed by the consent of all the directors.

- B. Regular meetings of the Board of Directors may be held without notice to the public of the date, time, place and purpose of the meeting.
- C. Special meetings of the Board of Directors may be called by the President or by two or more Directors. The person or persons calling the special meeting shall fix the date, time and place for the meeting. A special meeting must be preceded by at least two days written notice to each Director stating the date, time and place and purpose of the meeting.

Section 10: QUORUM: A quorum for the transaction of business shall consist of a majority of the number of directors when an odd number of directors are currently serving on the board. When an even number of directors are serving, then no less than half of the number of directors serving will constitute a quorum. When a vote is taken, the affirmative vote of the majority of the Directors present is the act of the Board of Directors. In the case of a tie vote, the President of the Board will cast a deciding or additional vote. A Director, who is present at a meeting of the Board of Directors, or a committee of the Board of directors, when corporate action is taken, is deemed to have assented to the action taken unless:

- A. A Director's dissent or abstention from the action taken is entered in the minutes of the meeting; or,
- B. The Director delivers written notice of dissent or abstention to the presiding Officer of the Meeting before its adjournment, or to the Secretary immediately following the Meeting. The right of dissent or dissension is not available to a Director who votes in favor of action taken.
- C. A director may vote in person or assign his/her proxy to vote to another director for a given length of time not to exceed 90 days.

Section 11: DIRECTORS' CONDUCT AND/OR REMOVAL: A Director shall discharge the duties of a director including the duties as a member of a committee, in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the Director reasonably believes to be in the best interest of the of Directors. Directors may be removed with or without cause, upon a majority vote of the board of directors as described within Section 10. (see ORS 65.324)

Section 12: CONFLICT OF INTEREST: (See ORS 65.361) Any director having a direct or indirect interest in any contract or other transaction to which the Cemetery is or may be a party shall make a prompt and full disclosure of such interest to the Board of Directors prior to its acting on such contract or transaction. Where a possible conflict of interest exists, the Director shall not vote nor otherwise influence the outcome of any such transaction. The Board of Directors shall authorize any transaction with respect to which a Director has a conflict of interest only if receives the affirmative vote of all Directors who have no direct or indirect interest in the transaction. The abstention of an interested Director shall not present a quorum if all disinterested directors vote to approve the transaction, provided that no transaction may be authorized by the act of a single Director. The minutes of the meeting shall reflect the disclosure made and the vote will respect to the transaction.

Section 13: COMPENSATION OF DIRECTORS: Upon approval of the Board of Directors the board members may be compensated for their service to the board. The amount of compensation is to be determined by a vote of the board. In addition, the Cemetery shall reimburse each director for actual costs incurred in serving as a director. A signed receipt

may be turned in at a board meeting and approved for payment by the directors or alternatively, approved by the executive committee.

Section 14: ACTION OF DIRECTORS WITHOUT A MEETING. Any action required or permitted by the Oregon Nonprofit Corporation Act (ORS Chapter 65), the articles of Incorporation or Bylaws to be taken at a meeting of Directors, or any other action which may be taken at a meeting of directors, may be taken without a meeting if the action is taken by the executive committee subject to board approval at the next board meeting.

- A. The action must be evidenced by one or more written consents describing the action taken and must be signed by majority of the executive committee. All such actions of the committee shall be included in the next board minutes filed with the corporate records.
- B. Action taken under this section is effective when the last director signs the consent, unless the consent specifies an earlier or later effective date.
- C. A consent signed under this section has the effect of a meeting vote, and may be described as such in any document.

Section 15: TELEPHONIC MEETINGS: Any or all directors may participate in a regular or special meeting of the board of directors through use of any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Section 16: EXECUTIVE COMMITTEE: A standing committee, hereafter referred to as the Executive Committee, shall consist of the President, Vice-President, Secretary and Treasurer. This committee shall have the authority to act between board meetings. All actions taken by this committee shall be placed in writing and signed by the committee members. These actions will take effect immediately and be presented at the next board meeting for acceptance or rejection by simple majority vote of the board. Only accepted actions shall remain in effect.

ARTICLE FOUR – EMPLOYEES

Section 1: DUTIES OF THE MANAGER: The manager is an employee and is employed at the sole discretion of the board of directors. The manager is to advise the board regarding any decisions that need to be addressed out of the normal course of the business day. The board shall approve any decision prior to action being taken by the manager that is not within the scope of the normal business day. It shall be the manager's responsibility to: Sell graves spaces, vaults, liners, markers, opening and closings, mausoleum spaces, and niches. It shall also be the responsibility of the manager to give directions to any interested party regarding cemetery affairs. Including but not limited to prices, grave locations, special interests (i.e. veterans grave locations,) rules and regulations and cemetery bylaws.

Section 2: MANAGER: The manager shall perform such administrative duties as defined and listed within the manager job description adopted by the board along with duties as may from time to time be assigned by the board of directors including but not limited to:

- A. Direction and supervision of all Cemetery personnel subject to review by the President. No employee of the cemetery may be related in any way to any Director, Officer or other employee of the Cemetery.
- B. Providing regular periodic reports to the board of directors on the financial affairs of the

Cemetery, reports on sales of Cemetery property and services; and,

C. Shall keep the board informed as to Cemetery operations.

Facilitate the work of the board as necessary and directed by the board, including but not limited to minutes, correspondence, record keeping and other clerical services.

The board may hire an assistant to the manager. It will be the responsibility of the assistant to carry out any duty delegated to them. This may be either a fulltime or part time position. The assistant shall not make decisions regarding cemetery policy or rule, but will look to the manager to present them to the board.

The board may also authorize the hiring of a groundskeeper and an assistant groundskeeper that will work as needed, budget and funds permitting. Groundskeepers are supervised by the manager and in accordance to the groundskeeper job description adopted by the board of directors.

ARTICLE FIVE – ENDOWMENT CARE FUND

Section 1: ENDOWMENT CARE FUND: (See ORS 97.810) The Cemetery shall establish and maintain an endowment care fund and/or maintenance trust account for the earlier sections, for the general care and maintenance of all endowment portions of the Cemetery, memorials erected thereon and the mausoleum. All endowment care funds and trusts shall be deposited in trust with a trust company, investment firm, bank or savings association designated by the board of directors and upon such terms and conditions as may be agreed by and between the trustee and the Cemetery. The trustee shall serve at the pleasure of the board of directors.

- A. The endowment care fund shall be held, managed and invested by the trustee in accordance with applicable Oregon law.
- B. The net income earned by the fund and trust, or so much thereof as is necessary, shall be used by the Cemetery exclusively for the general care and maintenance of Cemetery property and in such manner as the board of directors may, from time to time, determine to be in the best interests of the endowed property of the Cemetery. Net income of the endowment care fund shall never be used for the improvement or embellishment of the undeveloped Cemetery property offered for sale.

Section 2: CARE FUND DEPOSITS: The Cemetery shall deposit in the endowment care fund:

- A. Not less than 15% of the gross sales price of all burial property sold; and
- B. All contributions and gifts made to the Cemetery.

Section 3: ANNUAL REPORTS: Within 75 days of the end of each fiscal year, the Cemetery shall file with the Secretary of State a verified statement containing the information required by ORS 97.810.

- A. A copy of each annual report to the Secretary of State shall be maintained in the Cemetery's business office and shall be available for inspection by members and prospective purchasers of Cemetery property.
- B. The president at each annual meeting of the members shall review the annual report of the endowment care fund.

ARTICLE SIX – CONTRACTS, LOANS, CHECKS AND DEPOSITS

Section 1: CONTRACTS: Except as limited in these bylaws, the board of directors may authorize any officer or agent to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Cemetery and such authority may be general or confined to specific instances.

Section 2: LOANS: No loans shall be contracted on behalf of the Cemetery and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the board of directors. Such authority may be general or confined to specific instances.

Section 3: CHECKS, DRAFTS, ETC.: Checks drafts or other orders for the payment of money, notes or other evidence of indebtedness, issued in the name of the Cemetery, shall be signed by such officer or agent of the Cemetery and in such manner as shall from time to time be determined by resolution of the board of directors, except that all checks drawn on Cemetery accounts in excess of \$3500.00 shall be signed by two persons.

Section 4: DEPOSITS: All funds of the Cemetery not otherwise employed shall be deposited from time to time to the credit of the Cemetery in such banks, trust companies or other depositories as the board of directors may select.

ARTICLE SEVEN – INDEMNIFICATION

Section 1: DIRECTOR AND OFFICER LIABILITY: No director or officer, compensated or uncompensated, shall be personally liable to the Cemetery for monetary damages for conduct as a director or officer except for:

- A. Any breach of the director or officer's duty of loyalty to the Cemetery;
- B. Acts or omissions not in good faith or which involve intentional misconduct or knowing violation of law;
- C. Any unlawful distribution;
- D. Any transaction from which the director or officer derived an improper personal benefit; and
- E. Any act or omission in violation of ORS 65.361 (conflict of interest); ORS 65.364 corporate loans or guarantees for directors and officers); and ORS 65.367 (unlawful distributions).

Section 2: INDEMNIFICATION: The Cemetery shall indemnify any individual made a party to a proceeding because the individual is or was a director, officer, employee, or agent of the cemetery against liability incurred in the proceeding if:

- A. The conduct of the individual was in good faith;
- B. The individual reasonably believed that the individual's conduct was in the best interest of the Cemetery, or at least not opposed to its best interest;
- C. In the case of any criminal proceedings, the individual had no reasonable cause to believe the conduct of the individual was unlawful.

- Section 3:** DIRECTORS AND OFFICERS: The Cemetery shall indemnify its directors and officers to the fullest extent permitted by law.
- Section 4:** ADVANCES OF EXPENSES: The expenses incurred by a director or officer in any proceeding shall be paid by the Cemetery in advance at the written request of the director or officer if the director or officer:
- A. Furnishes the Cemetery a written affirmation of such person's good faith belief that such person is entitled to be indemnified by the Cemetery; and,
 - B. Furnishes the Cemetery a written undertaking to repay such advance to the extent that it is ultimately determined by a court that such person is not entitled to be indemnified by the Cemetery. Such advances shall be made without regard to the person's ability to repay such expenses, and without regard to the person's ultimate entitlement to indemnification under this bylaw or otherwise.
- Section 5:** ENFORCEMENT: Without the necessity of entering into an express contract, all rights to indemnification and advances under this bylaw shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the Cemetery and a director or officer or agent who serves in such capacity at any time while this bylaw and relevant provisions if of applicable law, if any are in effect. Any right to indemnification or advances granted by their bylaw to a director, officer or agent shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (A) the claim for indemnification or advances is denied in whole or in part, or (B) no disposition of such claim is made within ninety days of the request therefore. The claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expenses of prosecuting a claim. It shall be a defense to any such action that the claimant has not met the standards of conduct which make it permissible under Oregon law for the Cemetery to indemnify the claimant for the amount claimed. The burden of proving such defense shall be on the Cemetery.
- Section 6:** SURVIVAL OF RIGHTS: The rights conferred on any person by this bylaw shall continue as to a person who has ceased to be a director, officer, employee or other agent, and shall inure to the benefit or the heirs and personal representatives of such person.
- Section 7:** NO PRESUMPTION OF BAD FAITH: The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of no contest, or its equivalent, shall not of itself, create a presumption that the person failed to act in good faith and in a manner which the person reasonably believed to be in or not opposed to, the best interest of the cemetery and, with respect to any criminal proceeding, that the person has reasonable cause to believe that the conduct was unlawful.
- Section 8:** DEFINITIONS: For the purpose of these bylaws, the following definitions shall apply:
- A. The term "proceeding" shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement and appeal of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.
 - B. The term "expenses" shall be broadly construed, and shall include without limitation the expense of investigation, judicial or administrative proceedings or appeals, attorney's fees and disbursements and any expenses of establishing a right to indemnification under this Bylaw, but shall not include amounts paid in settlement, judgments or fines.

ARTICLE EIGHT – AMENDMENTS

The bylaws of the Cemetery may be amended or repealed and new bylaws may be adopted by the affirmative vote of a majority of the directors present at any duly and regularly called and held regular or special meeting of the board of directors.

The foregoing are the amended and restated bylaws of Eureka Cemetery and Mausoleum Association adopted by the board of directors on this day of February, 22 2016.