Introduced by: Council Member Eric Whitney
Date: August 27, 2013
Public Hearing: September 10, 2013
September 24, 2013
Action: Passed
Vote: 6-0

CITY OF BETHEL, ALASKA

Ordinance #13-21

AN ORDINANCE AMENDING SECTION 13.20 CEMETERIES AND BURIALS

THEREFORE BE IT ORDAINED by the City Council of Bethel, Alaska, that the Bethel Municipal Code shall be amended and revised as follows:

SECTION 1. Classification. This ordinance is of a permanent nature and shall become part of the Bethel Municipal Code.

SECTION 2. Amendment The Bethel Municipal Code Section 13.20, is amended as follows (new language is underlined and ~~old language is stricken out~~):

Chapter 13.20
CEMETERIES AND BURIALS

Sections:

13.20.010 Purpose and intent.
13.20.015 Definitions.
13.20.020 Permits required.
13.20.030 Burial – Generally.
13.20.040 Grave preparation, interments, and disinterments – Responsibility.
13.20.050 Marking of graves.
13.20.060 Compliance with Native American Graves Protection and Repatriation Act.
13.20.070 City cemeteries designated.
13.20.080 Burial lot reservations in city cemeteries.
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13.20.100 Care of city cemeteries.
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13.20.130 Rules and regulations – Promulgation and authority.
13.20.140 Fees.
13.20.150 Enforcement.
13.20.160 Violations – Penalties.

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13.20.010 Purpose and intent.
It is the intent of this chapter to provide for the orderly organization of cemeteries within the city to promote the public safety, health and welfare; to provide for proper burial in such cemeteries; ensure the continuity of their operation; and provide for accountable recordkeeping for ~~city~~ cemeteries within the city.

13.20.015 Definitions.
For the purposes of this chapter, the following terms, phrases, words and their derivations will have the meaning given herein. Words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number and words in the masculine gender include the feminine. The word "will" is always mandatory and not merely directory.

"Burial" or "interment" means the permanent disposition of the remains or cremations of a deceased person by crypt or vault entombment, burial of remains in a niche or container, or earth burial.

"Burial lot" means a single platted parcel of land within a cemetery designed for interment of human remains, including graves, plots, sites or spaces.

"Burial permit" means a valid city permit allowing the burial of a deceased person in any cemetery.

"Burial preparation" or "grave preparation" means the excavation, backfill and removal of excess material from a burial lot and replacement of the turf.

"Cemetery" means a burial park for earth and crypt interments.

"City" means the city of Bethel.

"City cemetery" or "municipal cemetery" means a cemetery owned and operated by the city in accordance with this chapter and designated as a city cemetery under BMC 13.20.070.

"Disinterment" or "exhumation" means the removal of a deceased person's remains from a grave.

"Immediate family" means the person's spouse, domestic partner, siblings, children, parents, grandparents or grandchildren.

"Memorial" means any marker, monument, tablet, headstone or structure upon or in a burial lot, niche or crypt placed thereupon for the identification or memory of the interred.

"Native American Graves Protection and Repatriation Act" means the federal laws embodied in United States Code Title 25, Chapter 32, which were enacted to protect the ownership and control of Native American cultural items.

"Permittee" means a person who has acquired the right to use a burial lot in accordance with this chapter, and any rules or regulations promulgated in accordance with this chapter.

"Perpetual care" means providing for normal and reasonable maintenance of burial lots, the grounds, walks, roadways, boundaries and structures in a city cemetery in order that they shall remain and be reasonably cared for as cemetery grounds forever. Perpetual care includes cutting of grass at reasonable intervals; removal of rubbish; general care and pruning of trees and shrubs that may be along the walks, roadways and boundaries. It does not include the care or cultivation of any special flowers, shrubs, trees or other plants on any particular burial lots or grave spaces; nor the repairing, removal, replacement, reconstruction or maintenance of monuments or memorials; nor the construction or reconstruction of any marble, granite, bronze or concrete work on any lot where same is damaged from any cause whatsoever. The city is solely responsible for determining the level of perpetual care and normal and reasonable maintenance that it shall provide at city cemeteries.

"Remains" means any part or parts of the body of a deceased person.

"Reservation" means the reserving of a burial lot(s) in advance of interment, and does not imply any fee simple transfer of ownership.

13.20.020 Permits required.

A. The use of burial lots, including grave preparation, interment and disinterment in city cemeteries or in private cemeteries within the city shall be accomplished only upon the issuance of a permit, to include a ~~**certified**~~ copy of the deceased's ~~**death certificate**~~ **transit permit** and payment of a permit fee to the city. Permits shall be issued in accordance with rules and regulations promulgated under this chapter. Permits shall not be issued unless the permit applicant has previously complied with ~~7 AAC 05.520, et~~

~~seq., and any other later enacted state requirements for burials.~~ all current state, federal and local laws and regulations.

B. For use of private cemeteries within the city, permits issued by the city will be required in addition to obtaining authorization and satisfying other requirements of the owners and operators of the private cemeteries.

C. A one-time permit fee as specified in the current city of Bethel fee schedule will give the permit holder exclusive use of the lot so identified. As public law prohibits the actual sale of cemetery land, there is no conveyance of title or land ownership involved in the reservation or issuance of a permit for a gravesite. Such reservation or permit is essentially a "lifetime easement" which guarantees such exclusive use.

13.20.030 Burial – Generally.

A. Reservation of the burial site, interments, and disinterments shall be accomplished in accordance with the provisions of this chapter, any applicable rules and regulations promulgated under this chapter, and the laws of the state of Alaska.

B. It shall be unlawful to bury any human remains within the city except within the city cemeteries designated in this chapter or in a private cemetery which meets the requirements imposed on private cemeteries by this chapter.

13.20.040 Grave preparation, interments, and disinterments – Responsibility.

A. All grave openings, closings, site preparation, interments, disinterments and exhumations (referred to in this section as "such actions") will be performed in accordance with this chapter and any rules and regulations adopted under this chapter. All such actions shall be performed by and are the responsibility of the person who reserved the burial plot where such actions will take place. The city accepts no responsibility and shall not be held liable for the performance of any such actions, or any damages, claims, or lawsuits arising from or related in any way to such actions.

B. Notwithstanding subsection A of this section, the city may, at its sole and exclusive discretion, perform such actions. If it does perform such actions, however, it accepts no responsibility and shall not be held liable for the performance of such actions, or any damages, claims, or lawsuits arising from or related in any way to such actions.

C. The city must be notified at least forty-eight (48) hours before any internment and up to one week notice prior to any disinterment. Disinterments will be done at a time determined by the city clerk but only during the months of September and October.

D. It is unlawful to permit final disposition of a dead human body or fetus unless accompanied by a duly executed burial-transit permit issued by the State of Alaska, any other state in the union, or Canada. This permit must accompany the body until its final disposition and will then be retained in permanent records kept by the city. The process of cremation is itself considered final disposition. Cremated remains shall not require a burial-transit permit for interment in the cemetery.

F. No body shall be disinterred for removal to another cemetery without a permit issued by the State of Alaska Division of Vital Statistics. All other health and transportation requirements shall be fulfilled. A licensed mortician must be present at all disinterments and the family is responsible for hiring a licensed and insured contractor to perform the disinterment.

G. Prior to performing a disinterment, the city must receive written consent from the interment right owner or successor-in-interest and the person(s) who are lawfully authorized to control the final disposition of the human remains. The authorizing agents, in the order of priority are as follows:

1. The person who was designated by the decedent prior to death as the authorizing agent to control final disposition;

2. The surviving spouse;

3. The decedent's surviving children 18 years of age or older;

4. The decedent's surviving parents;

5. The decedent's surviving siblings 18 years of age or older.

H. Whenever a body is being disinterred from the city cemetery, it shall be necessary to obtain the consent of the families of those burial plots which will be affected by the disinterment.

I. If consent to disinter cannot be obtained by the deceased's authorizing agents or by the families whose burial lots will be affected by the disinterment, the human remains may only be disinterred by order of the District Court.

J. Upon the disinterment of the deceased, the casket shall be wrapped in plastic so as to contain all fluids and prevent leakage. The casket shall remain wrapped throughout the entire transport process and may not be unwrapped until it has reached the new grave location. Once a casket has been removed from a city cemetery, it is the responsibility of those seeking the disinterment to ensure all contaminated soil surrounding the disinterred casket is collected and disposed of using locally and federally accepted hazardous materials disposal. A police escort shall be secured at least one week in advance to escort the transport of the deceased from one gravesite to another.

K. Permits for interments into the Veterans Memorial Cemetery located within the Bethel Memorial Cemetery must be accompanied by a copy of the deceased's DD214. If a copy of the DD214 is not readily available it is the responsibility of the family to prove without question the validity of the services by the deceased.

13.20.050 Marking of graves.

A. A permanent marker identifying the person interred must be placed on a grave within one (1) year of interment.

B. All markers and memorials~~, including size and type, shall conform to rules or regulations adopted under this chapter.~~ shall at minimum contain the following information:

1. First and last name of deceased, year of birth and year of death.
2. Additional inscriptions are optional, but must be in good taste as determined by the city of Bethel.

C. The city accepts no responsibility and shall not be held liable for the care and marking of graves.

13.20.060 Compliance with Native American Graves Protection and Repatriation Act.

All persons engaging in grave preparation, disinterment, or other activities at city cemeteries shall comply with the Native American Graves Protection and Repatriation Act.

13.20.070 City cemeteries designated.

A. The municipal cemetery owned and operated by the city, located at Plat No. 81-4, known as Ridgecrest Memorial Cemetery; the municipal cemetery owned and operated by the city, located at Plat No. 97-24, known as Ptarmigan Memorial Cemetery; and approximately nine and one-half (9 1/2) acres adjoining the west boundary of the Bethel Airport in the area commonly known as the "Sand Pit" located within Sections 13 and 14, T. 8 N., R. 72 W., Seward Meridian, known as Bethel Memorial Cemetery are hereby dedicated for burial purposes and shall be made available subject to the provisions of this chapter to all persons regardless of sex, race, creed, color, age, religion, disability, national origin or other legally protected status. ~~The above-referenced cemeteries are designated as city cemeteries. After the nine and one-half (9 1/2) acres in the "Sand Pit" is formally surveyed as provided for in subsection B of this section, the formally surveyed area shall be designated as a municipal cemetery, and the city shall name the cemetery.~~

B. The city manager will cause the boundaries of the city cemeteries to be surveyed, platted and the plats recorded with the district recorder's office. The city clerk will cause a map to be developed within the platted boundaries of the city cemeteries that depicts burial lots, an identification system of burial lots, access ways, fencing, open spaces and all other features that will facilitate the orderly use and maintenance of the cemeteries. The map shall be kept on file at the city.

C. By resolution, the city council may close city cemeteries, or portions thereof, for additional burial due to capacity limits or other reasons consistent with protection of the public safety, health, and welfare.

D. The city may, in its sole and exclusive discretion, limit or deny access to certain or all areas of a city cemetery, or limit or deny use of burial lots at city cemeteries. Any person who does not comply with such closure or limited access shall be in violation of this chapter.

13.20.080 Burial lot reservations in city cemeteries.

A. Burial lots in city cemeteries may be reserved upon payment of a fee, on a first- (1st) come, first- (1st) served basis by any person. To avoid speculation on city burial lots by

commercial interests and to preserve the ability of family members to be buried together to the extent reasonably possible, no person may reserve more than ten (10) burial lots, and no person may sell or transfer his or her reservation rights to anyone other than an immediate family member, after receipt of a burial lot reservation from the city. The city must be informed of any transfer of reservation rights within six months of transfer.

B. The city will have the sole and exclusive discretion to assign a specific burial lot to an applicant for reservation of a burial lot in a city cemetery.

C. The city will maintain burial reservation records which shall include the name and address of the person who has obtained the reservation and the date of reservation.

D. The city will not authorize the burial of any person in the burial lot other than the person who has obtained the reservation or a member of his or her immediate family.

E. Burial reservation rights to any unused plot may be relinquished to the city but may not be sold or otherwise transferred except as provided in this section.

F. Reservation fees for a plot vacated due to exhumation or relinquishment will not be refunded, and the burial site will return to the pool of unreserved sites or removed from circulation based on the condition of the site location.

G. Notwithstanding the provisions of this section, a person shall not be required to reserve a burial lot in order to be buried in a city cemetery if there is space available for burial, upon payment of a burial permit fee and otherwise complying with this chapter and any rules or regulations promulgated in accordance with this chapter. Spaces that are not reserved shall be assigned on a first- (1st-) come, first- (1st-) served basis.

13.20.090 Rights reserved by the city.
With respect to city cemeteries, the city reserves the right at any time:

A. To enlarge, reduce, replat or change the boundaries or any part thereof;

B. To modify, change location, move or regrade roads, drives, walks or any part thereof;

C. To lay, maintain, operate, alter or change pipelines, gutters, sprinkler systems or drainage;

D. To relocate grave sites or allow disinterment upon proper legal authority;

E. To change or add requirements for type and size of burial markings, decorations, and memorials;

F. To change or add requirements related to issuance of permits;

G. To change the fees charged under this chapter;

H. To change or add interment locations, space, or capacity;

I. To control access in and out of the city cemeteries or to any part thereof by pedestrians, vehicles, bicycles, and any other means of transportation;

J. To change or add requirements related to maintenance, landscaping, care, construction, repairs, and grave preparation;

K. Of ingress and egress over all plots for the purpose of maintenance, operations or any emergency work necessary to the operation of the cemetery;

L. To make any other changes, impose any conditions or requirements, or otherwise act to protect the public safety, interest and welfare; and

M. To change, add, or amend any of the conditions, requirements, and provisions of this chapter.

13.20.100 Care of city cemeteries.

A. The city will be responsible for perpetual care at city cemeteries. In doing so, the city may control access to any and all driveways, gates or fencing and may close access to certain portions of the cemeteries for the protection of public property or to provide for the safety, health and welfare of the public.

B. The city will take reasonable precautions to protect all grave markers at city cemeteries from loss, damage or destruction. Notwithstanding such reasonable precautions, the city expressly disclaims any responsibility or liability for any loss, damage or destruction that does occur, including but not limited to loss, damage or destruction that results, directly or indirectly, from theft, vandalism, malicious mischief, accidents or acts of nature.

13.20.110 Burial records.

A. The city clerk shall keep and maintain records of all burials and disinterments in city cemeteries.

B. The city will not be responsible for compiling, keeping, or maintaining, and shall not compile, keep or maintain, records regarding burials, disinterments, or any other actions which took place at city cemeteries prior to ~~the effective date of this chapter.~~ June, 2001.

13.20.120 Prohibited acts.

A. Deposit of Materials. No person will deposit any rubbish, filth, waste or other unclean or unsightly substance in the city cemeteries.

B. Vehicle Operation Limitations. It is unlawful for any person to operate any vehicle, motorized or nonmotorized, in a city cemetery except on the established roadways in accordance with all applicable local and state laws. Vehicles may not exceed a speed of ten (10) miles per hour. No vehicle may enter the cemetery except for the purpose of attending funerals, visiting graves or other activity approved in advance by the city clerk. Any damage caused to vehicles while operating within the cemeteries are not the responsibility of the city.

C. Hazardous Conditions. The city reserves the right to remove or to demand that the permittee or designated agent remove any tree, shrub, plant, fencing or other structure, enclosure, decoration, headstone, tomb, marker or monument located on any individual grave space which becomes dangerous or detrimental to the operations of a city cemetery or interferes with or encroaches upon adjacent grave spaces.

D. Property Damage. It will be unlawful for any person to destroy, mutilate, cut, remove, break, deface or injure any trees, shrubs, plants, ornaments, walks, sidewalks, fences, gateposts, monuments, markers or other things used in or belonging to a city cemetery.

E. Animals. It is unlawful to ride or drive any animal upon, over or across the lands or lots of any cemetery except on established vehicle ways; or to hitch or tie any animal to any trees, shrubs, plants or other ornament within any cemetery, or permit any animal to be pastured in the cemetery. It is unlawful to bury any animal remains in the cemetery.

F. Noise. It is unlawful for any person, except a city employee or contractor in the performance of his or her duty in caring for a city cemetery, to ~~willfully~~ make any unreasonable noise or disturbance within a city cemetery.

13.20.130 Rules and regulations – Promulgation and authority.
The city clerk shall be responsible for general administration of cemeteries within the city and shall promulgate rules and regulations to implement this chapter. Such rules and regulations may include, but not be limited to, use, maintenance, hours of operation, administration, permits, and reservations for city cemeteries and burial, disinterment and other requirements for all cemeteries within the city. Such rules and regulations shall be deemed approved by the city council unless the council acts to disapprove them within thirty (30) days of their adoption by the city clerk. The city clerk shall hold at least one (1) public hearing on any proposed rules or regulations under this chapter before adopting them.

13.20.140 Fees.
The city shall impose fees necessary to adequately administer this chapter, fulfill its obligations under this chapter and maintain city cemeteries. Such fees shall be established and may be periodically adjusted through noncode ordinance. Such fees may also be adjusted in accordance with BMC 4.04.025.

13.20.150 Enforcement.
The city manager and/or his or her designee will enforce this chapter and all cemetery rules and regulations promulgated in accordance with this chapter.

13.20.160 Violations – Penalties.
Any person who violates any provision of this chapter will, upon conviction thereof, be fined in an amount not exceeding three hundred dollars ($300). Each day such violation is committed or permitted to continue will constitute a separate offense and will be punishable as such hereunder.

SECTION 3. Effective Date. This section shall become effective immediately upon the passage by City Council.

Introduced by:	Council Member Eric Whitney
Date:	August 27, 2013
Public Hearing:	September 10, 2013 September 24, 2013
Action:	Passed
Vote:	6-0

ENACTED THIS 24 DAY OF SEPTEMBER 2013, BY A VOTE OF 6 IN FAVOR AND 0 OPPOSED.

Joseph A. Klejka, Mayor

ATTEST:

Lori Strickler, City Clerk