

## ORDINANCE 15-001

**AN ORDINANCE OF THE TOWN OF PIKEVILLE, NORTH CAROLINA, REPEALING CURRENT CHAPTER 96: CEMETERIES, AND REPLACING WITH NEW CHAPTER 96; PROVIDING FOR A TITLE; PROVIDING FOR APPLICABILITY; PROVIDING FOR DEFINITIONS; PROVIDING FOR SUPERINTENDENT, APPOINTMENT, DUTIES; PROVIDING FOR OFFICIAL TOWN CEMETERY MAP; PROVIDING FOR PURCHASE OF TOWN CEMETERY PLOTS AND/OR LOTS, COST/PURCHASE PRICE FOR PLOTS AND/OR LOTS, ISSUANCE OF CERTIFICATE OF BURIAL RIGHT; DIFFERENTIAL IN COST/PURCHASE PRICE FOR IN-TOWN AND OUT-OF-TOWN PURCHASERS, PROHIBITION OF SPECULATION IN PLOTS OR LOTS; PROVIDING FOR PLOT AND LOT RULES AND REGULATIONS; PROVIDING FOR A BURIAL PROCEDURE, AND COSTS ASSOCIATED WITH BURIAL; PROVIDING FOR HOURS OF OPERATION; PROVIDING FOR REGULATION OF VEHICLES; PROVIDING FOR TREES AND SHRUBS AND OTHER IMPROVEMENTS; PROVIDING FOR DEPOSIT OF CERTAIN MATERIALS PROHIBITED AND OTHER PROHIBITED ACTS; PROVIDING FOR A PENALTY; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, a review of the current Town Cemetery Ordinance, contained in Chapter 96 of the Town Code of Ordinances reveals a lack of definitions of certain key words, and a lack of clarification and/or consistency associated with certain rules, regulations, requirements, and/or provisions contained within the current Town Cemetery Ordinance; and

**WHEREAS**, in light of such concerns, it has been determined by the Board that it is in the best interests of the Town to repeal the current Town Cemetery Ordinance contained in Chapter 96 of the Town Code of Ordinances, and replace it with a new Town Cemetery Ordinance contained in a new Chapter 96 of the Town Code of Ordinances.

**NOW, THEREFORE, BE IT ORDAINED** by the Board of Commissioners of the Town of Pikeville, North Carolina, as follows:

**Section 1. Repeal Current Chapter 96 of Town Code, and Replace with New Chapter 96 of Town Code.** Chapter 96 of the current Town of Pikeville Code of Ordinances, which details rules, regulations, requirements, and provisions associated with the Town of Pikeville Cemetery is hereby repealed in its entirety, and is replaced with a new Chapter 96 of the Town of Pikeville Code of Ordinances, which sets forth, and details definitions, rules, regulations, requirements, and other provisions associated with the Town of Pikeville Cemetery, and which are expressed in the following Ordinance, as noted hereafter:

## CHAPTER 96: CEMETERIES

### Section

96.01	Title
96.02	Applicability
96.03	Definitions
96.04	Superintendent; Appointment; Duties
96.05	Official Town Cemetery Map
96.06	Purchase of Town Cemetery Plots and/or Lots; Cost/Purchase Price for Plots and/or Lots; Issuance of Certificate of Burial Right; Differential in Cost/Purchase Price for In-Town and Out-of-Town Purchasers; Prohibition of Speculation in Plots or Lots; Restriction in Number of Lots That Can Be Purchased By Funeral Homes or a Related Commercial Business or Enterprise or Persons Representing Funeral Homes or a Related Commercial Business or Enterprise
96.07	Lot Rules and Regulations
96.08	Burial Procedure; Costs Associated with Burial
96.09	Hours of Operation
96.10	Regulation of Vehicles
96.11	Trees and Shrubs; Other Improvements
96.12	Deposit of Certain Materials Prohibited and Other Prohibited Acts
96.13	Penalty

### **Section 96.01 TITLE.**

This Chapter shall be known as the Town of Pikeville Cemetery Ordinance Rules and Regulations. This Chapter may be cited as the Town Cemetery Ordinance.

### **Section 96.02 APPLICABILITY.**

The terms, definitions, rules, and regulations associated with the Town Cemetery Ordinance shall apply to the Cemetery owned, controlled, and maintained by the Town, and which is graphically noted by and on the Official Town Cemetery Map.

### Section 96.03 DEFINITIONS.

For purposes of the Town Cemetery Ordinance, the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense shall include the future, words in the plural number shall include the singular number, and words in the singular number shall include the plural number. The words “*shall*” and “*will*” are always mandatory, and not merely directive or indicative. The word “*may*” is permissive and indicative, and not mandatory.

(a) *Board* shall mean the Board of Commissioners of the Town of Pikeville, North Carolina.

(b) *Casket* shall mean a box or chest used in the burial/interment of human remains.

(c) *Cremains* shall mean human remains that have undergone cremation.

(d) *Cremation* shall mean the act of incinerating a burial/interment of human remains.

(e) *Columbarium* shall mean a structure with niches (small spaces) for placement of cremated remains in urns or other approved containers. The *columbarium* may be located outdoors as a separate structure, or as part of a mausoleum.

(f) *Decorative Shrubbery, Trees, and/or Flowers* shall mean any, and all, flowers (fresh-cut or artificial) placed within a plot or lot by a person, not employed by the Town. As noted in the Town Cemetery Ordinance, under certain circumstances, *decorative shrubbery, trees, and/or flowers* may include stuffed animals, mylar/plastic balloons, and items of remembrance not exceeding two (2) feet in length and/or two (2) feet in width.

(g) *Gravesite* shall mean the space within a plot that deceased human remains are buried, or the niche within a columbarium where cremains are placed.

(h) *Interment* shall mean the act of burying human remains.

(i) *In-town* shall mean a person who owns residential property within the Town geographic limits, as well as, any non-property owner who has been a Town resident for at least sixty (60) months prior to purchasing a plot and/or lot within the Town Cemetery.

(j) *Lot* shall mean a grave site that is officially numbered on the Town Cemetery Official Map. Unless otherwise noted on the Official Cemetery Map, a *lot* in Sections 4 through

9 of the Town Cemetery shall measure 10 feet by 16 feet (10' x 16'). A *lot* in Sections 1 through 3 of the Town Cemetery is varied in size.

(k) *Marker* shall mean a plaque installed at ground level of the site of a grave, designed to indicate one or more of the following: 1) name; 2) date of birth; 3) date of death; and/or 4) other information related to, or associated with the person buried at the particular grave site.

(l) *Mausoleum* shall mean a building or structure substantially exposed above-ground, which is intended to be used for the entombment of remains of a deceased person.

(m) *Monument* shall mean a memorial stone or other structure erected/placed/located at a gravesite in remembrance of the deceased.

(n) *Out-of-town* shall mean any person who does not either own residential property within the Town geographic limits, or who has not been a Town resident for at least sixty (60) months prior to purchasing a plot and/or lot within the Town Cemetery.

(o) *Permanent Shrubbery, Trees, and/or Flowers* shall mean shrubbery, trees, and/or flowers planted and/or owned by the Town, or Town contractors, that are not temporary, and of a more permanent nature. *Permanent Shrubbery, Trees, and/or Flowers* shall not belong to, a person or corporation, or be associated with a particular or specific plot and/or lot. *Permanent Flowers* specifically exclude any, and all, flowers (fresh-cut or artificial) that are *decorative* in nature and that are placed on, along, beside, or within a head stone, foot stone, marker, monument, columbarium, mausoleum, or gravesite by a person, not employed by the Town.

(p) *Plot* shall mean a subdivision of a *lot*. Unless otherwise noted on the Official Town Cemetery Map, the size of a *plot* within Sections 4 through 9 of the Town Cemetery measures 4 feet (width) by 10 feet (length) (4' by 10').

(q) *State* shall mean the State of North Carolina.

(r) *Superintendent* shall mean the Town Administrator, who is designated by the Board, as the individual charged with performing the administrative and executive functions, and exercising the responsibilities noted in the Town Cemetery Ordinance.

(s) *Town* shall mean the Town of Pikeville, North Carolina.

(t) *Town Administrator* shall mean the Administrator for the Town of Pikeville, North Carolina.

(u) *Town Cemetery* shall mean the Cemetery owned, controlled, and maintained by the Town.

(v) *Town Cemetery Map* shall mean the Official Town Cemetery Map kept, and used by the Town Administrator/Superintendent, for Town Cemetery purposes.

(w) *Town Clerk* shall mean the Clerk for the Town of Pikeville, North Carolina.

(x) *Vault* shall mean a grave liner that completely covers a casket.

#### **Section 96.04 SUPERINTENDENT; APPOINTMENT; DUTIES.**

(A)(1) The Town Administrator shall serve as the Superintendent of the Town Cemetery, and shall continue as Superintendent, for as long as the Board determines that the interests of the Town are preserved by having the Town Administrator serve as Superintendent of the Town Cemetery.

(2) The Superintendent, or designee, shall have such powers and duties as shall be conferred on him/her by this Chapter, and any applicable Ordinance, Resolution, or Order of the Board, at any time hereafter enacted, adopted, or made.

(B) The Superintendent, or designee, shall have charge of the upkeep, protection, and preservation of the Town Cemetery. The Superintendent shall supervise the following activities: 1) the digging of all graves; 2) the interment and/or disinterment of deceased persons; 3) the erection of monuments and markers; and 4) the planting of any, and all, shrubbery, trees, and flowers within the Town Cemetery, that are deemed *permanent* in nature.

(C) The Superintendent, or designee, shall maintain all necessary and/or required records related to, or associated with the following: 1) the Town Cemetery; 2) purchase of plot(s), or lot(s); 3) purchasers of plot(s), or lot(s); and 4) burial of deceased persons, including those interred/placed in a Columbarium within the Town Cemetery.

(D) In connection with the Town Cemetery, the Superintendent, or designee, shall not contract any debt, and/or expend any money, without having first obtained the consent and approval of the Board.

(E) It is expressly noted that the Superintendent may delegate one or more of the responsibilities and/or duties noted in this Section to another person, so long as the

Superintendent has determined that the overall interests of the Town and/or Town Cemetery will not be negatively impacted by such a delegation.

**Section 96.05 OFFICIAL TOWN CEMETERY MAP.**

- (A) The Superintendent shall maintain an Official Town Cemetery Map, which shall depict as accurately as possible, the boundaries of the Town Cemetery, and the location, and dimension of all lots within Sections 4 through 9 of the Town Cemetery. The Official Town Cemetery Map shall also depict as accurately as possible, roadways (both current and planned).
- (B) The purchase of one or more plots, and/or one or more lots in the Town Cemetery shall be sold in accordance to, and as referenced/marked/numbered on the Official Town Cemetery Map.

**Section 96.06 PURCHASE OF TOWN CEMETERY PLOTS AND/OR LOTS; COST/PURCHASE PRICE FOR PLOTS AND/OR LOTS; DIFFERENTIAL IN COST/PURCHASE PRICE FOR IN-TOWN AND OUT-OF-TOWN PURCHASERS; PROHIBITION OF SPECULATION IN PLOTS OR LOTS.**

- (A) All persons desiring to purchase one or more plots, and/or one or more lots in the Town Cemetery shall apply to the Town Clerk. Upon full payment of the current and/or applicable fixed price for each plot and/or lot, the person/purchaser shall receive a Certificate of Burial Right or other approved instrument of receipt to the person/purchaser.
- (B) The Certificate of Burial Right shall identify the purchaser and the specific/ marked plot(s) and/or lot(s) to which the Certificate of Burial Right applies. There shall be no conveyance of title to any gravesite, plot and/or lot, but the right of interment shall be sold as herein provided and such right shall be evidenced by the Certificate of Burial Right.
- (C) The Certificate of Burial Right is not assignable, and may not be sold, and/or exchanged for goods and/or services without the written consent of the Town Cemetery Superintendent, or designee, and *an administrative fee of \$100.00 (One hundred dollars) shall be assessed and paid*, to the Town, which shall constitute the Fee for Assignment. In the case of a sale, assignment, and/or exchange, then a new Certificate of Burial Right shall be issued, expressly naming the new person entitled to the Certificate of Burial Right.
- (D) For the purpose of selecting a specific plot and/or lot, the purchaser of a Certificate of Burial Right may be required to inspect the lot or space at the Town Cemetery, accompanied by the Superintendent, or designee.

- (E) The cost of plot(s) and/or lot(s) in the Town Cemetery shall be as set forth by Resolution of the Town, and shall remain as set forth, until revised/amended by a subsequent Resolution of the Town.
- (F) The Board may establish differing purchase prices/costs for plot(s) and/or lot(s), depending on whether a purchaser is defined/classified as either *in-town*, or *out-of-town*.
- (G) The cost of plot(s) and/or lot(s) in the Town Cemetery shall be the same whether used for interment or cremation.
- (H) A person may not sell, exchange, or barter a plot and/or lot for a profit or gain.
- (I) No funeral home or other related commercial business or enterprise may purchase more than ten (10) lots within a ten (10) year timeframe. Further, no person representing a funeral home or related commercial business or enterprise may purchase more than ten (10) lots within a ten (10) year timeframe.

#### **Section 96.07 LOT RULES AND REGULATIONS.**

- (A) All lots within the Town Cemetery, and any lots subsequently added to the Town Cemetery, or any subsequent expansion of the Town Cemetery, shall be subject to, and regulated and controlled by the provisions, terms, conditions, rules, and regulations contained in the Town Cemetery Ordinance, whenever adopted or enacted. This provision explicitly includes any Resolution approved and adopted by the Town concerning costs/purchase price for plot(s) and/or lot(s) within the Town Cemetery.
  - (1) It shall be unlawful for any person, firm, or corporation to throw, deposit, or otherwise place, or cause to be thrown, deposited, or otherwise placed on, or within the Town Cemetery, any paper, glass, cans, garbage, trash, or solid waste (especially, and including, any waste defined, or deemed, medical waste) of any kind other than in a properly designated solid waste basket.
  - (2) No motorized vehicles, including, but not limited to, automobiles, trucks, motorbikes, motorcycles, recreational vehicles (RVs), scooters, or sport utility vehicles (SUVs) shall be allowed in, or travel within the Town Cemetery, except in the designated parking area, or as otherwise permitted and/or authorized by the Superintendent.
- (B) The following rules and regulations for the use of Sections 2 through 9 of the Town Cemetery are set forth as follows:
  - (1) All head stones shall be placed as near as possible to the west lot line of each Town Cemetery lot.

- (2) All foot stones or foot markers shall be placed no more than eight feet from the west lot line of each Town Cemetery lot, in order to preserve space for a walkway at the east end of each Town Cemetery lot.
  - (3) Town Cemetery lots, which on the effective date this division (B) become non-conforming with respect to the requirements, set forth in the Town Cemetery Ordinance shall be brought into conformity within ninety (90) days of the effective date of this division (B). If a Town Cemetery lot is not brought into compliance within ninety (90) days of the effective date of this division by the owner of the Town Cemetery lot, then the Town shall take such action as is necessary to bring the Town Cemetery lot into compliance, and the cost of bringing the lots into compliance shall be borne by the purchaser.
  - (4) A copy of this division (B) shall be mailed by the Superintendent to all owners of Town Cemetery lots, whose lots are not in compliance with the regulations adopted and/or enacted herein whose address can be reasonably determined by the Superintendent.
  - (5) Mausoleums shall not be located on any Town Cemetery lots other than Town Cemetery lots 208, 209, 210, 211, and 213 of Section 3, or lots 930 through 953 in Section 6. No mausoleum already in place shall be required to be moved.
  - (6) A Columbarium may be located on lots 734, 735, 736, 737, 744, 745, 746, and/or 747 in Section 4 of the Town Cemetery.
- (C) In the event any provision in this Town Cemetery Ordinance is violated by a corporation, the officer, agent, or employee thereof, who violates such provision, or who procures, aids, or abets such violation, shall be subject to the same penalties, as if he/she had committed the violation.
- (D) There shall be no trespassing within a buffer of 200 feet of any outer boundaries of the Town Cemetery, except on the west side of the Town Cemetery along Cemetery Road. This restriction shall include, but not be limited to grave diggers, funeral home personnel, and visitors to the Town Cemetery, by any, and all, means of egress. There shall be no disturbing of dirt, no discarding of trash, or other noxious materials within the aforementioned 200-foot buffer.
- (E) All graves shall be level with the surrounding areas, and no mounds shall be allowed.
- (F) No person shall construct, install, or place a perimeter wall or enclosing of any kind around any plot and/or lot located within the Town Cemetery.
- (G) Each plot shall be limited to one of the following:
- (1) The interment of one human body;
  - (2) The interment of one human body, and one cremation urn; or
  - (3) The interment of no more than four (4) cremation urns.



### **Section 96.08 BURIAL PROCEDURE.**

- (A) No person shall be buried in the Town Cemetery without a Certificate of Burial having first been obtained for the person who is to be buried in the Town Cemetery.
- (B) In order to achieve consistency and uniformity with respect to grave openings and closings, the Town shall use an outside contractor, for purposes of opening and closing graves. The cost/price for opening/closing a grave shall be set by Resolution, and may be included in any Resolution the Town adopts concerning the cost/purchase price of one or more plots and/or lots within the Town Cemetery. The cost/price for opening/closing a grave shall be applicable to any grave or gravesite regardless of the Section, plot, or lot that the grave or gravesite is located. The cost/price for opening/closing a grave shall include and be applicable to any plot and/or lot designated or classified for a mausoleum. *The cost/price charged shall be the cost/price established as of the date of the opening/closing of the grave.*
- (C) With respect to the burial, no burial may take place in the Town Cemetery, except by a State-licensed funeral director, or the employees of funeral director, who are under the supervision of the Superintendent, or designee of the Superintendent. The Town shall be notified at least twelve (12) hours in advance of any funeral for which a grave shall be opened. Burial from sundown on Friday, until sunrise on Monday, may not take place, unless accommodations with Town staff are pre-arranged. Further, the State licensed funeral director, or employees of the funeral director shall abide by, and comply with, any accepted industry standards, to the extent that such exist.

### **Section 96.09 HOURS OF OPERATION.**

- (A) The Town Cemetery shall remain open to the public throughout the year from sunrise to sunset.
- (B) No person may enter the Town Cemetery, or use or perform any acts within the Town Cemetery, at any time other than the hours of operation, set forth above, unless authorized by the Superintendent.

### **Section 96.10 REGULATION OF VEHICLES.**

- (A) The Superintendent shall make provision for the entrance and exit of persons and vehicles, to, and from, the Town Cemetery.

- (B) Vehicles shall be driven only on the roadways within the Town Cemetery, and at a rate of speed, not in excess of 15 miles per hour. Vehicles are permitted within the Town Cemetery for the following purposes: 1) preparing a gravesite for burial/interment; 2) delivering a headstone, casket or vault to a gravesite; 3) removing a headstone, casket or vault from a gravesite; 4) preparing for the placement of a marker or monument on a gravesite; 5) repairing a damaged gravesite; 6) attending a funeral/burial/interment; or 7) visiting a gravesite.
- (C) In order to minimize the likelihood of damage to property (real/personal) within the Town Cemetery (including monuments, markers, and permanent structures), vehicles wider than fifteen (15) feet, and/or longer than thirty (30) feet, are not permitted within the Town Cemetery, unless approved in advance by the Superintendent, or designee.

**Section 96.11 TREES AND SHRUBS; OTHER IMPROVEMENTS.**

- (A) No person shall plant, or set any decorative tree, shrub, flower, grass, or other plant of any kind within a plot or lot of the Town Cemetery, except with the prior approval of the Superintendent.
- (B) The pruning or cutting of trees and shrubbery is prohibited unless done under the immediate supervision of the Superintendent.
- (C) All grading, landscaping and improvements of every kind within the Town Cemetery (especially within any plot and/or lot) shall be made or done by the Town only.
- (D) Decorative flowers may be placed within the space allotted for a plot and/or lot located within the Town Cemetery. For purposes of this Section, decorative flowers include stuffed animals, mylar/plastic balloons, and items of remembrance not exceeding two (2) feet in length, and/or two (2) feet in width. Decorative flowers may be removed for the following reasons: 1) interference with mowing or landscaping duties of Town within the Town Cemetery; 2) poses a health hazard; or 3) have been significantly altered in shape, size, or color by time, or natural elements, such as wind, rain, and/or the sun.

**Section 96.12 DEPOSIT OF CERTAIN MATERIALS PROHIBITED; PROHIBITED ACTS.**

- (A) No person, or legal entity of whatever kind and/or nature shall throw, deposit, or otherwise place, or cause to be thrown, deposited, or otherwise placed on, or within the Town Cemetery, any paper, glass, cans, garbage, trash,

refuse, yard waste, or solid waste of any kind other than in a properly designated refuse, or recyclable basket.

- (B) No person shall disturb the quiet, repose, and good order to the Town Cemetery, nor shall any person deface, remove, disturb, injure or destroy any *permanent* or *decorative* tree, plant, or shrub located within the Town Cemetery, except as set forth in the Town Cemetery Ordinance.
- (C) No person may post or attach any bills, posters, placards, pictures, or other form of political or commercial advertising within the Town Cemetery, or on the inside or outside of any wall, fence, or tree enclosing the Town Cemetery.
- (D) Trespassing within the Town Cemetery is prohibited and no person shall commit any immoral or criminal act within the Town Cemetery.

**Section 96.13 PENALTY.**

Any person, firm, or corporation violating any provision, section, subsection, or division of the Town Cemetery Ordinance, or failing, or neglecting, or refusing to abide by, or comply with any provision, section, subsection, or division of the Town Cemetery Ordinance shall, upon conviction, be guilty of a class 3 misdemeanor, as set forth or defined under State law, and subject to a fine not to exceed \$50 (Fifty dollars) or imprisonment, not to exceed 30 (thirty) days, and each day that any provision, section, subsection, or division of the Town Cemetery Ordinance is violated, shall constitute a separate offense.

**Section 2.** If any section, subsection, sentence, clause, phrase, provision, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, sentence, clause, phrase, provision, or portion shall be deemed a separate, distinct, and independent provision of such holding, and shall not affect the validity of the remaining sections, subsections, sentences, clauses, phrases, provisions or portions thereof.

**Section 3.** This Ordinance shall become effective immediately upon its enactment.

**PASSED AND ENACTED** after first reading, this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**TOWN OF PIKEVILLE**

**BY:** \_\_\_\_\_  
Glenn Hartman, Mayor

(SEAL)

**ATTEST:** \_\_\_\_\_  
Connie Witherspoon, Town Clerk