

**CEMETERY AND FUNERAL BUREAU
DEPARTMENT OF CONSUMER AFFAIRS
FINAL STATEMENT OF REASONS**

Hearing Date: July 12, 2012

Subject Matter of Proposed Regulations: Cemetery Maintenance Standards

Section Affected: 16 CCR Section 2333

Updated Information

The Initial Statement of Reasons is included in the file. There were no comments received which warranted changes to the proposed language.

Local Mandate

A mandate is not imposed on local agencies or school districts.

Small Business Impact

This regulation will not have a significant adverse economic impact on business.

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the board/bureau/commission/program would be more effective in carrying out the purpose for which it was proposed or would be as effective and less burdensome to affected private persons than the adopted regulation or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Summary of, and Responses to, Comments Received During the 45-day Comment Period

Comment #1

Jed A. Hendrickson, Santa Barbara Monumental Co., Inc.: Mr. Hendrickson believes that the regulation for cemetery maintenance standards is unnecessary.

Response to Comment #1

The Director rejects this comment. The Bureau determined the provision(s) of subsection (b) is necessary to give cemeteries without existing maintenance standards, or with inadequate maintenance standards, a minimum list of the items most often remarked upon by consumers as lacking adequate care. The provision(s) of subsection (c) is necessary because many cemeteries have their own existing written rules and regulations that cover cemetery maintenance, and as long as those rules and regulations cover the basic areas outlined in subsection (b), the Bureau felt it would be burdensome to require cemeteries to discard their existing standards in favor of the Bureau's. However, if cemeteries don't have maintenance standards, they must adopt the minimum standards set forth in subsection (b). The provision(s) of subsection (f) is necessary to provide increased transparency in business by ensuring that a consumer is educated about their ability to request and receive a copy of the cemeteries rules and regulations regarding cemetery maintenance, whether those standards are a copy of subsection (b) or the cemeteries' own rules and regulations under subsection (c) of this proposed regulation. A better understanding of the rights and obligations of both the consumer and the cemetery regarding the maintenance of the property should lead to fewer complaints. For example, a consumer may purchase interment rights in early spring when the cemetery is green and lush due to abundant rain, but be unaware that the cemetery is under watering restrictions the majority of the year, leading to a drastically altered appearance in late summer.

Comment #2

Steve Doukas, Commerce Holding Company, Inc.: Mr. Doukas suggests the language of (b)(9) be reworded to read "Supply trash receptacle(s) as deemed necessary by the cemetery authority and keep public areas of the cemetery clear of trash and debris within a reasonable time frame."

Response to Comment #2

The Director rejects this comment. The Bureau's proposed language was vetted by stakeholders and the phrase "when filled" in conjunction with the emptying of trash receptacles was found by the majority to be a clear and concise description of when a cemetery should empty its trash receptacles. Imposing an additional time frame was deemed unnecessary.

Comment #3

Steve Doukas, Commerce Holding Company, Inc.: Mr. Doukas suggests the phrase "water features" be deleted as unnecessary.

Response to Comment #3

The Director rejects this comment. Rather than being duplicative of areas already described, the Bureau believes that specifically including water features adds increased clarity to the maintenance standards being imposed.

Comment #4

Steve Doukas, Commerce Holding Company, Inc.: Mr. Doukas believes that “Control vermin” in (b)(11) is unclear and sets an impossible standard, and the language should focus more clearly on specific types of animals, such as gophers and moles by changing (f) [11] to read “Cemetery grounds maintenance shall include a program to reduce burrows and mounds on the cemetery grounds.”

Response to Comment #4

The Director rejects this comment. “Control vermin” means to have a process in place to limit their population. The Bureau is aware that the complete elimination of gophers and other vermin is a near impossible task, and that some animals or insects that may be considered undesirable are protected, which is why “control” was deliberately chosen instead of “eliminate.” Further, (b)(11) requires the control of vermin and insect problems, so changing (f) [11] to just address the reduction of burrows and mounds on the cemetery grounds would not be appropriate.

Comment #5

Steve Doukas, Commerce Holding Company, Inc.: Mr. Doukas believes that section (f) is a hardship and should be stricken.

Response to Comment #5

The Director rejects this comment. The requirement may be met through the simple addition of a small label affixed to the cemetery’s current supply of contracts, the costs of which would be minimal (see Economic and Fiscal Impact Statement). Striking the section would negate the intended purpose of ensuring that the consumer purchasing from the licensee is aware that the cemetery 1) has maintenance standards, and 2) that they may request a copy of them. A better understanding of the rights and obligations of both the consumer and the cemetery should lead to fewer complaints regarding cemetery maintenance.

Comment #6

Merrill Mefford, Rose Hills: Mr. Mefford felt the language in (b)(4) should include removal as an option.

Response to Comment #6

The Director rejects this comment. The Bureau determined adding the ability to remove the improvements, structures and fences referenced in (b)(4) is unnecessary due to the fact that cemeteries could address this issue by including it in their own rules and regulations under subsection (c), a copy of which is then available to the consumer signing a contract under subsection (f).

Comment #7

Merrill Mefford, Rose Hills: Mr. Mefford feels that the use of the word “hazard” in (b)(5) is vague.

Response to Comment #7

The Director rejects this comment. As utilized in (b)(5) in relation to cemetery road surfacing, a hazard is something that presents “a chance of being injured or harmed; danger” (as defined by the 4th edition of The American Heritage College Dictionary).

Comment #8

Merrill Mefford, Rose Hills: Mr. Mefford believes that (b)(7) should only be requested by the owner of the property, or frivolous complaints will ensue.

Response to Comment #8

The Director rejects this comment. Requiring the owner of the property to be the one to notify the cemetery of a settled grave or marker is not reasonable for a variety of reasons, among them the possibility that the owner of the grave is also interred there and they may have no family left to notify the cemetery of the state of the grave or its marker.

Comment #9

Merrill Mefford, Rose Hills: Mr. Mefford states that the language in (b)(8) should include replacement as an option.

Response to Comment #9

The Director rejects this comment. The Bureau determined adding the ability to replace damaged markers in (b)(8) is unnecessary due to the fact that cemeteries could address this issue by including it in their own rules and regulations under subsection (c), a copy of which is then available to the consumer signing a contract under subsection (f).

Comment #10

Merrill Mefford, Rose Hills: Mr. Mefford feels that the language in (b)(10) is vague and unnecessary, and suggests the language should read “Provide clear delineation of undeveloped cemetery property with the use of signage, fencing or some other means.”

Response to Comment #10

The Director rejects this comment. The delineation of undeveloped property through the use of signage was deemed to be the least burdensome alternative for the licensee while still serving the intended purpose of identifying for the consumer what parts of the cemetery are undeveloped. A cemetery could include fencing or some other means of delineation, in addition to the signage (by affixing the signage to the fence, for example) by addressing the issue in its own rules and regulations under subsection (c).

Comment #11

Merrill Mefford, Rose Hills: Mr. Mefford believes that the language in (b)(11) should be changed to read “Control vermin, excluding predatory mammals and birds, and insect problems in developed cemetery property.”

Response to Comment #11

The Director rejects this comment. See response to comment #4. Further, in regard to including the phrase “in developed cemetery property,” certain vermin, such as rats, will infest a large area in very little time and spill over into developed property without some plan in place to curb their numbers.

Comment #12

Christine Williams, Friends of Pacheco Pioneer Cemetery: Ms. Williams feels that the language in (b)(1) and (2) should include the word “regularly.”

Response to Comment #12

The Director rejects this comment. The Bureau determined adding the word “regularly” to the provision(s) of subsections (b)(1) and (b)(2) is unnecessary, and could create an unenforceable standard. “Regularly” could be considered a subjective addition to the regulation, as grass and weed growth in certain parts of California may be a year-round occurrence, while in others grass and weeds may be seasonal and grow only during parts of the year. Thus, requiring the “regular” trimming or mowing of grass that is slow or non-growing, or the suppression of weeds that aren’t prevalent, would be burdensome and unnecessary, yet prescribed by regulation.

Comment #13

Marc Brusie, Chico Cemetery Association: Mr. Brusie disagrees with the Bureau's findings in the Initial Statement of Reasons regarding significant adverse economic impact.

Response to Comment #13

The Director rejects this comment. Many cemeteries already have some form of maintenance standards in accordance with Health and Safety Code Section 8300, and all licensed cemeteries are already subject to the provisions of Health and Safety Code Section 8115. Printing costs associated with subdivision (f) are estimated at \$200 annually. Health and Safety Code Section 8728 allows the interest from the endowment care fund to be spent by the cemetery in order to cover the cost of maintaining the cemetery; subsection (g) was included specifically to ensure that cemeteries are monitoring their maintenance expenditures in light of the amount collected for endowment care and adjusting as necessary.

Comment #14

Marc Brusie, Chico Cemetery Association: Mr. Brusie believes that the Department of Consumer Affairs should regulate cemeteries [maintenance] based upon consumer complaints.

Response to Comment #14

The Director rejects this comment. Business and Professions Code Section 9612 mandates that the Bureau adopt cemetery maintenance standards regulations.

Comment #15

Marc Brusie, Chico Cemetery Association: Mr. Brusie is concerned that (b)(2) is open to interpretation and sets an overly burdensome standard.

Response to Comment #15

The Director rejects this comment. The language in (b)(2) "Suppress or remove weeds on the developed cemetery property" was deliberately chosen by the Bureau after stakeholder meetings to allow for a variety of control methods, as was the use of the word "suppress" versus "eliminate" or "eradicate." The Bureau is aware that the complete elimination and/or eradication of weeds is a near impossible task, which is why weeds are required to be curtailed instead of eliminated entirely.

Comment #16

Marc Brusie, Chico Cemetery Association: Mr. Brusie expressed concern over the interpretation of “hazard” in (b)(5).

Response to Comment #16

The Director rejects this comment. See response to comment #7.

Comment #17

Marc Brusie, Chico Cemetery Association: Mr. Brusie feels (b)(7) to be burdensome and something that is currently worked on based upon customer requests.

Response to Comment #17

The Director rejects this comment. See response to comment #8.

Comment #18

Marc Brusie, Chico Cemetery Association: Mr. Brusie feels the current proposed regulatory language as drafted to be burdensome and requests the Bureau revise it to “utilize very general language that can be interpreted as necessary.”

Response to Comment #18

The Director rejects this comment. The Administrative Procedure Act (APA) governs how an agency, in this case the Department of Consumer Affairs, Cemetery and Funeral Bureau, adopts regulations. All regulations proposed for adoption by the agency must be submitted to the Office of Administrative Law (OAL), who reviews the language for clarity, as well as what the regulation implements, interprets, or makes specific. Vague or general language would not meet the standards imposed.

Comment #19

Kenneth McKay, Joshua Tree Memorial Park: Mr. McKay questions what standards are to be adhered to with regards to cemetery maintenance, particularly what constitutes a violation of weeds or lack of mowing, or headstone condition.

Response to comment #19

The Director rejects this comment. See response to comment #15. Further, (b)(1) states “grass shall be trimmed or mowed to a level where flat markers of individual graves can be seen” thereby setting a clear standard for mowing. Headstones would need to be repaired if they are damaged by the negligence of the cemetery or its employees or contractors under (b)(8); “damage” is defined as “harm or injury to property [or person], resulting in loss of value or the impairment of usefulness.” (The American Heritage College Dictionary, 4th edition.)

Comment #20

Kenneth McKay, Joshua Tree Memorial Park: Mr. McKay states that there are economic impacts to both the consumer and the business because the endowment care fees currently collected by the cemetery cannot sustain cemetery maintenance.

Response to Comment #20

The Director rejects this comment. See response to comment #13.

Comment #21

Jerry Desmond, Jr., Cemetery and Mortuary Association of California: Mr. Desmond stated that his organization “appreciates the stakeholder process within which the proposed regulations were developed with significant input provided by all interests” and “thanks the Bureau for the process that has been undertaken to meet the difficult challenge of developing regulations on minimum maintenance standards for endowment care properties.”

Response to Comment #21

The Director accepts this comment. This expression of support was accepted and considered in the adoption of the proposed action.

Comment #22

Jerry Desmond, Jr., Cemetery and Mortuary Association of California: Mr. Desmond is concerned the Bureau lacks the authority to include subsection (g) in the proposed regulation.

The Director rejects this comment. Business and Professions Code Section 9612 mandates the Bureau to adopt cemetery maintenance standards regulations. Included in that statute is the language “the regulations shall also consider the extent to which funds are available from the cemetery’s endowment

care funds to perform maintenance.” Business and Professions Code Section 9630 allows the Bureau to “establish necessary rules and regulations for the administration and enforcement of this act and the laws subject to its jurisdiction.” The Bureau believes that it therefore has the authority, as defined by Government Code Section 11349(b). “Authority” means the provision of law which permits or obligates the agency to adopt, amend, or repeal a regulation,” to adopt the requirements found in subsection (g).

Further, the regulation includes (in reference) Health and Safety Code Sections 8728 and 8738, both of which deal with the amount collected by the cemetery in endowment care fund fees. Specifically, Health and Safety Code Section 8728 states that a cemetery can, in light of its plans for maintenance of the cemetery, “charge and collect from all subsequent purchasers of plots such reasonable sum as, in the judgment of the cemetery authority, will aggregate a fund, the reasonable income from which will provide care, maintenance, and embellishment.” Health and Safety Code Section 8738 states in part “An endowment care cemetery is one which has deposited in its endowment care fund the minimum amounts heretofore required by law and shall hereafter have deposited in its endowment care fund at the time of or not later than completion of the initial sale not less than the following amounts for plots sold or disposed of...”

“Reference” as defined by Government Code Section 11349(e) means “the statute, court decision, or other provision of law which the agency implements, interprets, or makes specific by adopting, amending, or repealing a regulation.” Therefore, the Bureau believes it has the ability to include subsection (g) in the regulation because it has the statutory obligation to include endowment care funding in the regulation under Business and Professions Code Section 9612, and the ability to interpret and make specific other provisions of law under its jurisdiction, in this case Health and Safety Code Sections 8728 and 8738.

Comment #23

Cynthia Beeman, Private Person: Ms. Beeman suggests the following language be inserted at the end of sentence two in subdivision (e): “However, cemeteries maintained in a natural condition or cemeteries with sections that are natural areas need to respect the elements unique to the site, and develop an appropriate plan insuring a site’s health and longevity.”

Response to Comment #23

The Director rejects this comment. The Bureau feels that this additional language is unnecessary due to the fact that cemeteries have the ability to enact expanded, site specific rules and regulations for the care of their property under Health and Safety Code Section 8300, which is referenced in subsection (c). Subsection (f) requires cemeteries to place a statement on their contracts that

maintenance standards are available for inspection, and that a consumer may request a copy for retention. Therefore, the consumer would have clarity of the standards of maintenance at a cemetery prior to purchasing right(s) of interment or scattering of cremated remains.