

Midway City Council
1 March 2022
Regular Meeting

Ordinance 2022-07 /
Cemetery Regulations



Midway

ORDINANCE

2022-__

**AN ORDINANCE AMENDING TITLE 2.16 OF THE MIDWAY CITY CODE REGARDING
THE MIDWAY CITY CEMETERY, AND RELATED MATTERS**

WHEREAS, prior rules and regulations governing the Midway City Cemetery did not adequately limit the number of plots for Permissive Burial Rights that could be purchased by any one individual; and

WHEREAS, many persons or families purchased multiple plots in the Midway City Cemetery for future use for themselves and their extended family members; and

WHEREAS, this has resulted in the unfortunate result that a large majority of the existing burial plots in the Midway City Cemetery have been sold, but remain unused; and

WHEREAS, despite an ordinance amendment attempting to limit the number of plots purchased by one individual, family or entity, the Cemetery continues to have difficulty limiting those purchases; and

WHEREAS, record keeping since the inception of the Cemetery in the late 1800's has not always been consistent or adequately maintained; and

WHEREAS, the City now has some plots where the current owners of the Burial Rights are difficult or impossible to determine; and

WHEREAS, the City previously adopted Resolution 21-24 placing a temporary moratorium on the sales of new Burial Rights until the records could be updated and the Code amended; and

WHEREAS, the City Council of Midway desires amend Title 2.16 of the Midway City Code to adopt and amend the rules, policies and procedures for the operation and maintenance of the Midway City Cemetery; and

NOW, THEREFORE, be it hereby Ordained by the City Council of Midway City, Utah, as follows:

Section 2.16.060 Lot Ownership and Privileges, of the Midway City Code, is hereby amended to read as follows:

2.15.060 Lot Ownership and Privileges

A. Nature and Extent of Burial Rights: A Burial Right Certificate grants the legal right for the named holder of the Certificate, or the named successor in interest, to be buried within the bounds of the designated burial plot / grave site listed on the Certificate. A Burial Right Certificate does not transfer ownership or title to any cemetery property. Midway City retains full ownership of all cemetery property. A separate Burial Rights Certificate for each grave site in the Cemetery will be issued to each purchaser after the applicable fees are paid in full.

B. Restriction of Number of Burial Right Certificates purchased or owned: Due to high demand for Burial Rights Certificates in the Midway City Cemetery, and the limited supply, the following restrictions shall apply to a Burial Rights Certificates purchased or transferred after the effective date of this Ordinance:

Single Burial Rights Certificates (for Single Burial Plots): Purchase or transfer of Single Burial Rights Certificates are subject to the following restrictions:

1. Residents of Midway City: A household, trust or other concern when the person is a resident of Midway (or where the principal owner is a resident of Midway), may own in its name no more than four (4) Burial Rights Certificates for future burial at any given time. Purchases of Burial Rights Certificates by minor children in an attempt to secure more than four (4) Burial Rights Certificates for a single household, trust or other concern is prohibited. Transfer of Burial Rights Certificates which causes the receiving party to exceed the four-lot limit are prohibited.

2. Residents of Wasatch County (outside of Midway City): A household, trust or other concern where the owner is a resident of Wasatch County, but not of Midway, may own in its name no more than two (2) Burial Rights Certificates for future burial at any given time. Purchases of Burial Rights Certificates by minor children in an attempt to secure more than two (2) Burial Rights Certificates for a single household, trust or other concern is prohibited. Transfer of Burial Rights Certificates which causes the receiving party to exceed the two-lot limit are prohibited.

3. Non-Residents of Midway City and Wasatch County: A household, trust or other concern where the principal owner is a non-resident of Wasatch County or Midway, may own in its name no more than two (2) Burial Rights Certificates for future burial at any given time. Purchases of Burial Rights Certificates by minor children in an attempt to secure more than two (2) Burial Rights Certificates for a single household, trust or other concern is prohibited. Transfer of Burial Rights Certificates which causes the receiving party to exceed the four-lot limit are prohibited.

Stacked Burial Rights Certificates (for Stacked Burial Plots): Purchase or transfer of Stacked Burial Rights Certificates are subject to the following restrictions:

1. Residents of Midway City: A household, trust or other concern where the principal owner is a resident of Midway, may own in its name no more than two (2) Stacked Burial Rights Certificates for future burial at any given time. Purchases of Burial Rights Certificates by minor children in an attempt to secure more than two (2) Stacked Burial Rights Certificates for a single household, trust or other concern is prohibited. Transfer of Stacked Burial Rights Certificates which causes the receiving party to exceed the two-lot limit are prohibited.

2. Residents of Wasatch County (outside of Midway City): A household, trust or other concern where the principal owner is a resident of Wasatch County but not of Midway, may own in its name no more than two (2) Stacked Burial Rights Certificates for future burial at any given time. Purchases of Stacked Burial Rights Certificates by minor children in an attempt to secure more than two (2) Stacked Burial Rights Certificates for a single household, trust or other concern is prohibited. Transfer of Stacked Burial Rights Certificates which causes the receiving party to exceed the two-lot limit are prohibited.

3. Non-Residents of Midway City and Wasatch County: A household, trust or other concern where the principal owner is a non-resident of Wasatch County or Midway, may own in its name no more than two (2) Stacked Burial Rights Certificates for future burial at any given time. Purchases of Stacked Burial Rights Certificates by minor children in an attempt to secure more than two (2) Stacked Burial Rights for a single household, trust or other concern is prohibited. Transfer of Stacked Burial Rights Certificates which causes the receiving party to exceed the two-lot limit are prohibited.

Cremation Burial Plot Burial Rights Certificate: Purchase or transfer of a Cremation Burial Rights Certificate are subject to the following restrictions:

1. Purchase of Cremation Burial Plot Certificate: Any household, resident or non-resident, may purchase one (1) Cremation Burial Right Certificate, which accommodates up to six (6) cremations with a total of one (1) stone marker. Prices for Residents of Midway City, Wasatch County, and non-residents shall be the same as for a single burial plot Burial Rights Certificate. Transfer of Cremation Plot Burial Rights Certificates which causes the receiving party to exceed the one-lot limit are prohibited.

B. Burial Rights Certificates to name successors in interest: Named owners of Burial Rights Certificates are required to name two (2) successors in interest on the Burial Rights Certificate. Owners of Burial Rights Certificates may change the designated successors in interest by submitting the appropriate form and amendment fee to the Midway City Sexton. Following the death of the named owner, the first successor in interest assumes all rights of ownership as if they were the original named owner, and a new Certificate will be issued in the successor in interest's name. If the first named successor in interest is also deceased, the second named

successor in interest shall assume all rights of ownership as if they were the original named owner, and a new Certificate will be issued in the second successor in interest's name.

C. Burial of person named on Certificate. Unless a valid transfer occurs, a Burial Right Certificate may be used to bury only the owner of the right named in the Certificate, a named successor in interest, or a person related to that owner or successor in interest by blood, marriage or adoption (regardless of whether the deceased was a resident of postal zip code 84049 at any point during his or her lifetime) as set forth herein.

D. Burial of Person Not Named On Certificate. The named owner of a Certificate, a named successor in interest, or his or her legal heirs, must give written permission at the time of the burial for use by a specific deceased individual of the specific grave site identified in the Certificate, subject to all applicable City ordinances and policies. The request shall be treated as a transfer, and shall be subject to the rules, fees, etc. applicable to other transfers. When written permission is received, the City shall issue a new Burial Rights Certificate in the name of the deceased person who is to be buried in the plot.

E. Record of Rights Conveyed. The Midway City Cemetery master file is considered to be the correct record. Any discrepancy between the master file and the Certificate of Burial Rights shall be considered a clerical error. The City reserves the right to recall, correct, and re-issue a corrected Certificate. To the extent possible, Midway City shall issue updated Burial Rights Certificates to owners who purchased the rights to burial plots previously.

F. Transfer of Ownership of Certificate. Burial Right Certificates may be transferred and re-issued to a different owner, in accordance with the restrictions contained in this Code, by written application to the City by the Certificate owner, a named successor in interest if the Certificate owner is deceased, or his or her legal heirs. The sexton shall re-issue the Certificate upon proof of identity, the applicant's payment of any required fees and compliance with all applicable standards and procedures. The Burial Right Certificate limits will be strictly enforced before a transfer is authorized.

G. Transfer of Ownership of Certificate by Testamentary Instrument. Burial Rights Certificates take precedence over any conflicting testamentary instrument. In the event that the record owner, and all named successors in interest are either deceased or cannot be located, the following rules shall apply:

1. Upon the death of the Certificate owner and all named successors in interest, an unused the Burial Rights Certificate may descend to those named in the will or other testamentary instrument of the last successor in interest, or that person's heirs as designated by law. An affidavit of heirship, together with the power appointing one of the heirs to represent all, or a certified copy of the decree of distribution of the estate of the deceased must be presented to the City to effectuate the transfer pursuant to this section. In the absence of such documentation, the City shall act upon its best judgment to determine heirship and successorship. The heirs are entitled to the same use of the Burial Rights Certificate as the original owner, and are bound by the same rules and regulations.

2. Midway City shall adopt policies and procedures governing the administrative process for determining owners based upon testamentary or similar evidence.

H. Unused Lots. Ownership of burial rights for grave sites that have been unused for 60 years or longer may revert to the City in accordance with the procedures set forth in Utah Code and the Midway City Policy and Procedure Manual.

I. Resale of Burial Rights Certificates for Profit is Prohibited. Resale, transfer, or conveyance of a Burial Rights Certificate to any person, group or organization, for profit, is strictly prohibited. If an owner of a Burial Rights Certificate determines that they do not need the Certificate, it may be transferred back to Midway City for the original purchase price.

J. Policies and Procedures. Midway City shall adopt policies and procedures that govern the operation of the Midway City Cemetery.

K. Fees: Fees for Burial Rights Certificates, Opening and Closing Fees and related charges shall be set by the Midway City Council.

This Ordinance shall take effect immediately upon publication as required by law.

PASSED AND ADOPTED by the Midway City Council on the ____ day of _____, 2022.

MIDWAY CITY COUNCIL

	AYE	NAY
Council Member Steve Dougherty	_____	_____
Council Member Jeff Drury	_____	_____
Council Member Lisa Orme	_____	_____
Council Member Kevin Payne	_____	_____
Council Member JC Simonsen	_____	_____

APPROVED

Celeste Johnson, Mayor

ATTEST:

Brad Wilson, City Recorder

APPROVED AS TO FORM

Corbin B. Gordon, City Attorney