

El Dorado County Government Operated Cemeteries Report

Legal Authority

In accordance with the California Health and Safety Code, counties have responsibility for all public cemeteries that are not otherwise owned and managed by another legislatively recognized entity. Specifically, Health and Safety Code section 8131 states, *“All public cemeteries within the county that are ‘not owned by a city or by a fraternal or beneficial association or society are under the jurisdiction and control of the Board of Supervisors of the county in which they are situated.”*

The source of the county’s jurisdiction lies with its inherent police power and is codified in Health and Safety code section 8115, which states, *“The governing body of any city or county, in the exercise of its police power, may by ordinance prescribe such standards governing burial, inurnment, and entombment and such standards of maintenance for cemeteries, including mausoleums and columbarium, as it shall determine to be reasonably necessary to protect the public health or safety, assure decent and respectful treatment of human remains, or prevent offensive deterioration of cemetery grounds, structures and places of internment. Such standards may be made applicable to every public and private cemetery within the city or county.”*

It should be noted that jurisdiction and control is not the same as title or ownership. While Health and Safety Code section 8131 provides the authority for the county to make all rules and regulations related to cemeteries within its boundaries, it does not require the County to assume responsibility of maintaining the cemeteries. For example, private cemeteries are maintained by their private ownership and likewise cemeteries controlled by fraternal or beneficial associations or special districts are maintained by those organizations.

The following sections from the Health and Safety Code are relevant to this matter:

- Section 7003 states that a cemetery is defined as a place where 6 or more human bodies are buried.
- Section 8125 provides that a board of supervisors may survey, lay out, and dedicate for burial purposes not exceeding five (5) acres of public land.
- Section 8126 states that title to lands in or near any city and used by the inhabitants without interruption as a cemetery for five years is vested in the inhabitants of the city and the lands shall not be used except as a public cemetery.
- Section 8131 states If not owned by a city or by a fraternal or beneficial association or society, public cemeteries are under the jurisdiction and control of the board of supervisors of the county in which they are situated.

El Dorado County Cemeteries

The County of El Dorado oversees the maintenance and operation of 19 cemeteries, three of which are located in Georgetown and funded by special zone taxes. In addition to the County-operated

cemeteries, there are privately operated, fraternal, religious, and two District cemeteries (Happy Homestead and Kelsey Pioneer Cemetery). It is estimated that there are around 90 cemeteries (where there are six or more burials) and 120 burial sites (where there are five or less burials) located in the County.

Plot sales are offered at some County-operated cemeteries. They include Georgetown-Renke Annex, Georgia Slide, Pilot Hill, and Placerville Union. The County recently installed Veterans' and public niches at Renke Annex; and Placerville Union has crypts and niches available for sale. The following is a list of cemeteries that the County currently operates or assists with the operation; the County has title to twelve of these.

- 1) Bryant (*Without Title*)
- 2) County Hospital/Pest House
- 3) Diamond Springs-Public (*Without Title*)
- 4) Fairplay (*Without Title*)
- 5) Grizzly Flat – Public (*Without Title*)
- 6) Georgetown Pioneer
- 7) Georgetown Renke Annex
- 8) Georgetown Georgia Slide
- 9) Greenwood (*Without Title*)
- 10) Latrobe
- 11) Middletown
- 12) Mormon Island
- 13) Pilot Hill
- 14) Placerville Union
- 15) Shingle Springs
- 16) Smith Flat
- 17) Spanish Dry Diggins
- 18) St. Michael's (*Without Title*)
- 19) Uniontown (*Without Title*)

The County is studying its options on cemeteries that it helps manage or manages and does not have title, except for St. Michael's. The County is obligated by Court action to maintain St. Michael's because the County allowed development to occur which impinged on the cemetery (e.g. allowing cell tower and roadway). The cemetery is owned by the Diocese of Sacramento.

In regard to the El Dorado Cemetery, the County is currently pursuing title to the cemetery due to the inability of the adjacent property owners to continue to maintain the cemetery and their interest in donating an adjacent parcel to the County (currently used as the cemetery parking lot). The legal entity responsible for El Dorado Cemetery is inactive and the cemetery is therefore at risk of becoming neglected. A quiet title action is in process to verify any other potential ownership interests and transfer title to the County.

There appear to be several other cemeteries which are, or may shortly be, in similar circumstances to the El Dorado Cemetery. Over time these cemeteries could become "abandoned", or at the very least, decline into a state of disrepair. At this time, the County does not have a comprehensive policy approach to dealing with the large number of these cemeteries located within the county. In the event these cemeteries are abandoned, under our current model the responsibility for many of these cemeteries may fall to the County. There is also confusion with some members of the public as to which cemeteries the County is responsible for maintaining.

Potential Future Impact to El Dorado County

Over the last three years, the General Fund costs to operate and maintain cemeteries have increased from approximately \$73,000 in General Fund support (cost after revenues and grants) in Fiscal Year 2015 -16 to approximately \$152,000 in General Fund support in Fiscal Year 2018 - 19.

In Fiscal Year 2018 - 19 the Placerville Union cemetery's special revenue fund will be exhausted and costs totaling approximately \$45,000 net County cost will now be paid from the General Fund. In addition to these costs, staff has identified several cemeteries that could potentially revert to County responsibility over the next five years.

If the County is required to take title of all the cemeteries that it currently assists and additional cemeteries transfer to County responsibility, it is estimated costs could increase by an additional \$50,000/year. Under this scenario, the County could potentially be paying approximately \$200,000/year in General Fund support to operate and maintain the cemeteries.

In addition to the annual operating costs, additional one-time costs will be required. Currently there is the need for ground penetrating radar surveys on several cemeteries. It is estimated that this work would cost approximately \$150,000. There is also the likelihood that many of these new County cemeteries will need significant capital expenses such as lighting, parking lots, roads, and ADA compliant enhancements. Without a comprehensive review of each cemetery staff is not able to estimate the fiscal impact.

Risk/Liability

The primary liability for a cemetery is the cost of maintenance. Not all cemeteries produce revenue and ownership or control requires the County of El Dorado to maintain cemeteries in acceptable condition. Since 1985 all public cemeteries have been required to establish an endowment fund to assist in funding of long-term maintenance. However, an endowment fund can take years to develop into a significant source of revenue and even then rarely provides for more than a small fraction of the cost of the maintenance. Adding to the problem is the fact that outside of charging for the sale of plots, typically public cemeteries are prohibited from engaging in other income producing activities related to the cemetery (i.e. sales of memorials or headstones). Those potentially income producing activities are reserved for private companies. A fundamental challenge for all public cemeteries remains the ability to identify ongoing, sustainable funding for operational and maintenance costs.

A secondary issue is the general liability of owning property and a duty to protect the public from hazardous conditions. Generally, a county is liable for injury caused by a dangerous condition on its property if the county created the dangerous condition or the county had actual or constructive notice of the dangerous condition and sufficient time to remedy the condition but did not. This dovetails with the county’s responsibility to maintain any cemetery under its control or ownership.

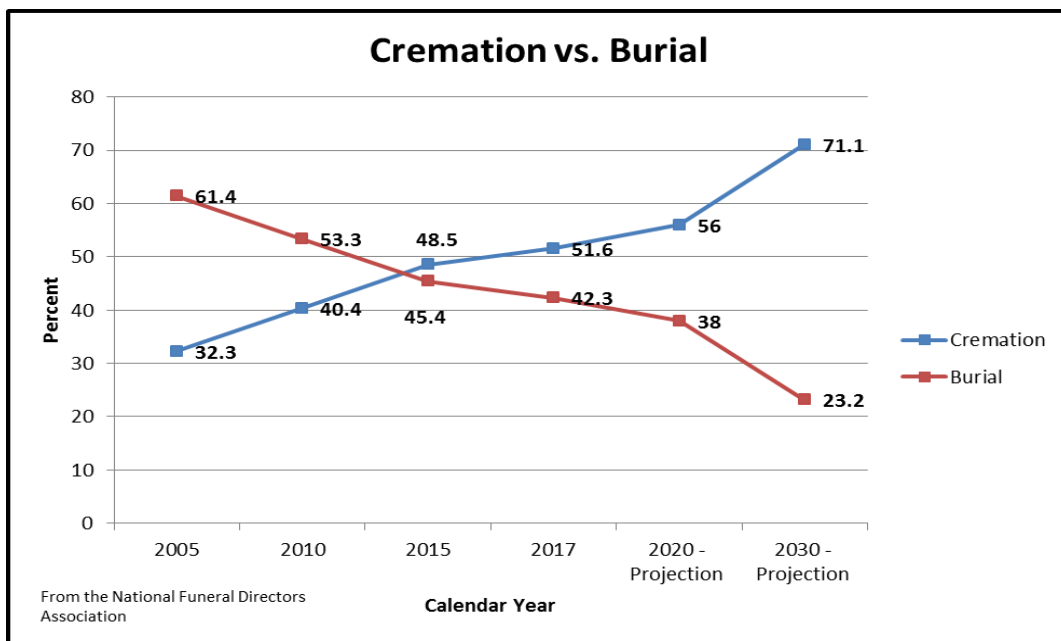
Lastly, a cursory review of the County’s cemetery ordinance identified the need to update the ordinance with respect to liability matters.

Why Are Privately Owned Cemeteries Asking for County Help?

There are many privately owned cemeteries that could potentially become the responsibility of the County to take over operations due to a variety of factors, including the following:

- 1) Family members moving away from the cemetery
- 2) Community members no longer willing to operate the cemetery
- 3) New landowner has no tie or connection to the cemetery
- 4) There is no one else managing the cemetery
- 5) Cemeteries not being financial viable with less burial space or less burials

With the mobility of families, the current trend of the County having to take over operations of cemeteries could be accelerated in the near future. Another possible reason for individuals choosing to no longer operate cemeteries is the change in demand for burial services. The National Funeral Directors Association (NFDA) reported that for the first time cremation surpassed burials in 2015 (please see the graph below for cremation vs. burial numbers). NFDA projects that this trend will only increase over the next 12 years with cremation being the dominant choice.



In addition to statistical information for the United States and countries around the world for which reliable data is available, the 2016 NFDA Cremation and Burial Report also contains data about consumer perceptions of end-of-life ceremonies and cremation, including:

- There are many reasons why consumers choose cremation, including cost considerations, environmental concerns, and fewer religious prohibitions and changing consumer preferences.
- Many families who choose cremation also commemorate their loved one's life. More than one-third (36.6 percent) associate cremation with a memorial service and 10.4 percent associate cremation with a viewing and funeral. Only 7.4 percent do not associate cremation with any kind of service at all.
- New in the report this year is cremation and burial data for Canada. For 2015, the rate of cremation is 65.5 percent and that of burial is 33.2 percent. The rate of cremation is expected to grow to 89.4 percent by 2035.

To put the above numbers into perspective, the State of California Department of Finance projects that in 2020 El Dorado County will have 1,735 deaths. Of those 1,735, approximately 1,500 will be on the West Slope (the Tahoe Basin was not included due to it having a cemetery district). With the help of Green Valley Mortuary & Cemetery, in El Dorado County, it is estimated that 92% to 93% of individuals in El Dorado County select cremation over burial. If 8% (the projected number of people in El Dorado County that would select traditional burial) of the 1,500 decided to be buried in El Dorado County (this is unlikely because some individuals would want to be buried outside of the County at veteran cemeteries or in other locations), then around 120 individuals would need some form of traditional burial services on the West Slope.

Please see Attachment C for information on the estimated available plots in El Dorado County operated cemeteries.

It should be noted that regardless of whether the number of actual burials continues to decrease in future years, under our current model the County will still be required to maintain the existing cemeteries.

How Are Other Counties Operating Cemeteries?

Staff reviewed the following 16 counties to identify how they operated their cemeteries (for additional information please see Attachment D):

- Amador
- Butte
- Calaveras
- Marin
- Merced
- Monterey
- Nevada

- Placer
- San Joaquin
- San Luis Obispo
- Santa Cruz
- Shasta
- Tuolumne
- Siskiyou
- Sonoma
- Yolo

These counties were selected due to their similar size and/or similar history (e.g. having many old cemeteries from the gold rush or mission cemeteries). The following is a summary of the findings; specific information such as who operates the cemetery, how the cemetery is funded, etc. is included in Attachment D.

- *Finding 1 – None of the 16 counties directly operates its cemeteries.*

All of the counties, with the exception of Marin, which does not have any public cemeteries, have formed cemetery districts. Currently, El Dorado County has two cemetery districts: Happy Homestead and Kelsey Pioneer Cemetery (no County funds go to operate these cemeteries).

- *Finding 2 – None of the 16 counties regularly use General Fund dollars to assist any cemeteries in their county.*

All of the counties reported that cemetery districts were funded by cemetery district property tax dollars. The counties do not fund the cemeteries with any regular funds. Some counties said at times they will help the cemeteries with small projects like weed abatement near the entrance to a cemetery. However, other counties said that they do not perform maintenance or provide any assistance; that is the responsibility of the district and the families.

- *Finding 3 – None of the 16 counties staff the cemeteries in their county.*

All 16 counties reported they do not staff any of the cemeteries.

- *Finding 4 – The cemetery districts interviewed confirmed they have endowment funds.*

All of the cemetery districts that were contacted confirmed that they had endowments funds. From the districts that knew the amount of their funds, it varied from a total of \$230,000 in one county to \$3.7 million in another county (two other counties had endowment funds in the millions).

In addition, County staff reviewed the staffing levels for some of the cemetery districts. Specifically, staff reviewed Auburn Cemetery District (Placer County) and Nevada Cemetery District (Nevada County). These districts have about the same active acres as El Dorado County (if you include all cemeteries that the County operates and could operate in the near future). The Auburn Cemetery District have two

administrative staff, three maintenance staff, and two part-time maintenance staff with a salary cost of approximately \$ 292,000 (benefits were not included). The Nevada Cemetery District in Nevada County has one administrative staff and three maintenance staff at a salary cost of approximately \$175,000 (benefits were not included).

Currently, El Dorado County funds 1 FTE position to cemetery administration with a salary of approximately \$50,000. That is the only position in the County that is dedicated to cemeteries. All other positions that support the cemeteries do it as one of their many assignments (e.g. CDS Admin and Finance staff and Facilities staff). For example, there are three other positions in CDS Admin that assist the cemeteries: Administrative Services Officer, Department Analyst, and Department Analyst. These positions help anywhere from 35% to 5% of their time. This equates to approximately \$56,100 in CDS staff time per year. While County Facilities, in Fiscal year 2016-17, had labor and some contractor costs of approximately \$17,500, which does not include labor hours it receives from an inmate/work program and Growlersburg.

How does a County create a special district for cemeteries?

The vast majority of jurisdictions have created special districts to fund and maintain their cemeteries. El Dorado County currently has just two such districts connected to the Happy Homestead Cemetery in the Tahoe area and the Kelsey Pioneer Cemetery. All other cemeteries under county control are maintained through general funding or special zone tax (e.g. Georgetown).

A public cemetery district can be created in one of the two following ways:

First, it can be initiated through public petition. A proposal to form a new district made by public petition must fulfill the requirements of California Health and Safety Code section 9011 and must be signed by not less than 25% of the registered voters in the area to be included. There is a general publication requirement pursuant to Government Code section 6061 and thereafter the qualifying petition is presented to the Local Area Formation Commission (LAFCO) for further proceeding and potential approval.

Alternatively, a proposal to form a new cemetery district can occur by the adoption of a resolution by the Board of Supervisors pursuant to California Health and Safety Code section 9013. Before adopting a resolution of this nature, the Board must hold a public hearing on the resolution. Notice of such hearing shall be published in one or more newspapers of general circulation within the County pursuant to section 6061 of the Government Code. The Board is also required to notify the executive officer of LAFCO at least 20 days prior to the scheduled hearing. The notice must describe the proposed formation of the district and the territory proposed to be included in the district. At the hearing, the Board shall give any person wishing to express an opinion the opportunity to speak. If at the conclusion of the public hearing, the Board adopts the resolution proposing the new cemetery district, the Clerk of the Board is required to file a certified copy of the resolution with the executive officer of LAFCO. LAFCO is then required to proceed on the resolution pursuant to Government Code section 9014.

All proposals to form a special cemetery district, regardless of method, must include a proposed name for the district, a description of the boundaries of the proposed district, the proposed method by which

the district will be financed (including any special taxes) and size of the initial board of trustees (Health and Safety Code, Sections 9011 and 9013).

What are Pioneer Memorial Parks and what does their designation do for cemeteries?

While conducting this review with different stakeholder groups, staff identified that many people had different ideas on what a Pioneer Memorial Park designation would do for a cemetery. El Dorado County has attempted to designate cemeteries as Pioneer Memorial Parks on two occasions without success.

In accordance with California Health and Safety Code section 8825, *“a county having a nonendowment care cemetery within its boundaries which threatens or endangers the health, safety, comfort or welfare of the public may, by resolution of the board, provided not more than 10 persons have been interred there in the five years immediately preceding the resolution, declare the abandonment of the cemetery as a place for future interment.”* The county is still required to allow any then vested owner of a plot in the cemetery to be interred there. The resolution may also provide for the removal of improvements and embellishments, i.e. markers, coping, and walls, that the board finds to be a threat to the health, safety, comfort, or welfare of the public.

After adoption of the resolution for abandonment and publication of intent for 60 days pursuant to section 8826 of the Health and Safety Code, the county is empowered to remove any improvements or embellishments which are found to be a threat or danger to public health, safety, comfort, or welfare of the public. Thereafter, and pursuant to Health and Safety Code section 8828, the Board may declare by resolution that the abandoned cemetery shall be dedicated as a pioneer memorial park and may cause to be erected a suitable memorial to those who have been buried in the cemetery.

The county can then record the resolution with the county recorder office and fee title to the cemetery shall vest in the county. The county is empowered to bring a quiet title action if necessary to perfect its title to the property. The property shall thereafter only be used for purpose of establishing and maintaining a pioneer memorial park and the county would have the duty to maintain said park.

This statute serves multiple purposes by allowing the County to take control of potentially historic and abandoned cemeteries for preservation purposes, allowing the County to control abandoned cemeteries as a potential public nuisance, and allowing for the reclamation of land for other uses (parks). The County is able to limit future use, eliminate any hazards caused by deteriorating improvements or installations and to clean up and thereafter maintain the park, while also authorizing the placement of a single memorial marker in the park as opposed to trying to repair, preserve, or maintain individual markers, walls and other embellishments that are falling into disrepair.

Conclusion/Recommendation

In the coming years, El Dorado County will likely have to take control of local cemeteries that are no longer being managed by other entities, resulting in additional cost to the General Fund, with little opportunity to generate offsetting revenue.

As a result, it is recommended that the Board direct staff to explore one of the following options:

1. County operated – The County continues to operate cemeteries. However, current staffing levels will be difficult to sustain with increased cemeteries and projects. New staff would have to be added to just maintain the current level of service.
2. Creation of a cemetery district – The County would ask the voters to create a cemetery district with funding coming from a parcel tax. If passed, this option would provide dedicated funding for additional cemeteries, capital projects and an endowment.
3. Contracting out cemetery operations – This option could provide an experienced private operator who could possibly increase the service level and visibility of the cemeteries. However, this option does not provide dedicated funding, so cemeteries would continue to receive General Fund dollars. In addition, it is not guaranteed that there would be operating savings with this model.

If a district is created, the operating entity could be district staff or a contractor.