

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF DECLARING A GRAVE)	RESOLUTION NO. 10-4181
PLOT IN LONE FIR CEMETERY ABANDONED)	
BY ITS OWNERS AND A COMMON NUISANCE,)	
AND DIRECTING THE CHIEF OPERATING)	Introduced by Chief Operating Officer
OFFICER TO FILE AN ORS 97.890 COMPLAINT IN)	Michael J. Jordan, with the concurrence of
MULTNOMAH COUNTY CIRCUIT COURT)	Council President David Bragdon

WHEREAS, Lone Fir Cemetery has been in existence since 1855 and has been a publicly-owned and operated cemetery since 1928; and

WHEREAS, Metro owns and operates Lone Fir Cemetery, one of 14 Pioneer Cemeteries owned and operated by Metro in Multnomah County; and

WHEREAS, on February 1 of 1902, P.A. Christenson purchased a grave plot containing three graves in the southeast quadrant of Lone Fir Cemetery, identified as graves 1 North, 2 North, 3 North in lot 10, block 38. In February of 1902 the Christenson family interred a child, Lillian in grave 2 North. Then, in January of 1909, the Christenson family interred an infant, un-named, in grave 3 North. The Christenson graves were not sold subject to agreements between Metro or its predecessors in interest and the Christenson’s providing for endowment care, permanent maintenance or free care of the graves. Lone Fir Cemetery has no record of any communication or interest from the owners or heirs to the Christenson family grave plot since the last burial occurred, in 1909. One grave in the plot remains unused by the Christenson family: Grave 1 North, Lot 10, Block 38; and

WHEREAS, ORS 97.870 provides that, when a cemetery has been in use for more than 40 years, and during that time has sold graves for burial purposes, and the owners of the graves sold or parties claiming through them have not used the graves for burial purposes for more than 40 years and have not taken responsibility for keeping them maintained free of weeds or brush during that time, and when said graves are adjacent to improved and used parts of the cemetery, and by reason of their uncared for condition detract from the appearance of the cemetery and interfere with the cemetery’s harmonious use and improvement, becoming a menace to the rest of the cemetery, said graves may be declared by the cemetery’s governing board to be a common nuisance and contrary to public policy; and

WHEREAS, ORS 97.880 provides that, if the Metro Council, in its capacity as Lone Fir Cemetery’s governing board, adopts a resolution declaring the unused and unimproved graves in Lone Fir Cemetery described under ORS 97.870 a common nuisance and an abandoned and unused portion of said cemetery, the Metro Council may then direct the Chief Operating Officer to file a complaint against the owners or heirs to the abandoned and unused graves in Multnomah County Circuit Court, requesting that they appear, acknowledge their ownership and take responsibility for the graves as provided in ORS 97.890; and

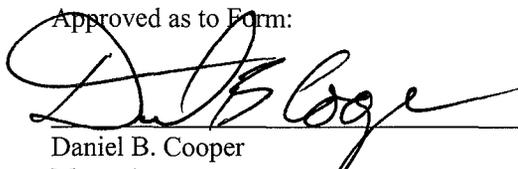
WHEREAS, ORS 97.920 provides that, upon failure of the owner of the graves to appear and answer the complaint, the circuit court may enter a judgment directing Metro to abate the nuisance, create a lien on the abandoned and unused graves in favor of Metro, and execute the lien on the abandoned and unused graves by foreclosure and sale, authorizing Metro to become a purchaser of the graves on behalf of Lone Fir Cemetery; now therefore

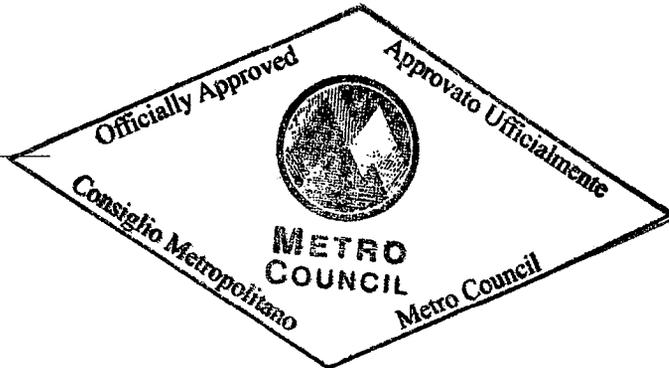
BE IT RESOLVED that the Metro Council declares that:

- (1) Grave 1 North, Lot 10, Block 38 in Lone Fir Cemetery has not been used for burial purposes by the owners or parties claiming through them for over 40 years, and has not been maintained by them or kept free of weeds or brush by them, and has been allowed to remain entirely unused by them for more than 40 years;
- (2) Grave 1 North, Lot 10, Block 38 in Lone Fir Cemetery is adjacent to improved and used parts of Lone Fir Cemetery, and were it not for regular maintenance by Metro staff would, by reason of their uncared for condition, furnish a place for the propagation of weeds and brush, and detract from the appearance of the cemetery and interfere with the harmonious improvement thereof;
- (3) Grave 1 North, Lot 10, Block 38 in Lone Fir Cemetery is therefore declared to be a common nuisance, an abandoned and unused portion of Lone Fir Cemetery, and contrary to public policy, in accord with ORS 97.870-880; and
- (4) The Metro Council directs the Metro Chief Operating Officer to file a complaint in Multnomah County Circuit Court against the Christenson's and parties claiming through them, requiring them to appear, acknowledge their ownership and take responsibility for the grave, and demanding that the court issue a judgment if they fail to do so, declaring the grave to be a common nuisance, directing Metro to abate the nuisance, creating a lien upon the grave in favor of Metro, providing that the lien be foreclosed, and authorizing that the grave be sold and Metro become a purchaser thereof, as set forth in ORS 97.890.

ADOPTED by the Metro Council this 12 day of AUGUST 2010.


David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper
Metro Attorney



STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 10-4181, FOR THE PURPOSE OF DECLARING A GRAVE PLOT IN LONE FIR CEMETERY ABANDONED BY ITS OWNERS AND A COMMON NUISANCE, AND DIRECTING THE CHIEF OPERATING OFFICER TO FILE AN ORS 97.890 COMPLAINT IN MULTNOMAH COUNTY CIRCUIT COURT

Date: August 5, 2010

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BACKGROUND

Metro Pioneer Cemeteries offer the region 63 acres of quiet reflection rich in art, architecture, poetry and sustains the memory of a diverse population of Oregon residents. What were once simple unplanned private burial grounds have evolved into park-like community cemeteries that are still in use today.

The Metro Pioneer Cemeteries were established from as early as 1837 through the early homesteading period (circa 1850-1870). As the years passed, caretaking responsibilities were often handed down to family descendants, and as the cemeteries grew, to private cemetery associations. None of the cemeteries had perpetual maintenance funds. Instead, to a greater or lesser degree, they relied on continuing grave sale revenue and charitable giving for maintenance funding. Over the intervening decades, care of pioneer cemeteries became inconsistent and some were abandoned to revert back to nature. After many years of such benign neglect, the Oregon Legislature mandated public stewardship of 14 of the Pioneer Cemeteries remaining in Multnomah County through a series of mid-century legislative enactments. Multnomah County received ownership of the cemeteries and was tasked with assuring proper perpetual maintenance of the facilities.

In 1994, Multnomah County transferred ownership of the Pioneer Cemeteries to Metro. Metro has continued to sell graves since that time, gradually filling the cemeteries. However, some of graves sold in the nineteenth century and early twentieth century remain empty - unused and uncared for by descendants of the pioneer families that originally purchased them. In some cases, Metro cemetery personnel have not heard from the now clearly deceased purchasers or their descendants for over 100 years. Metro considers these unused and uncared for graves practically abandoned, and they are at times a nuisance, serving as an impediment to the ongoing, orderly occupation of the cemeteries.

One such abandoned grave was sold to the P.A. Christenson family on February 1, 1902, along with two other graves, to form a family plot in the southeast corner of Lone Fir Cemetery. The Christensons purchased the graves from the Portland Lone Fir Cemetery Company, which operated Lone Fir Cemetery from 1866 to 1928. The sale contained no contribution by the Christensons for long term care of the family plot, nor was it sold subject to an agreement by the Portland Lone Fir Cemetery Company to provide perpetual care. In February of 1902 the Christenson family interred a child, Lillian. Then, in January of 1909, the Christenson family interred an un-named infant in a second grave, leaving the third grave empty. 100 years has now passed, and Metro has no record of the Christenson family caring for the grave plot or headstones since the last burial, and no record of any communication or interest from the owners or heirs to the Christenson family grave plot since 1909. Metro's recent search for the Christenson heirs has been unsuccessful, and Metro considers the unused third grave abandoned, for all practical purposes.

Oregon law provides a process for returning an abandoned grave to a cemetery authority so that it may be properly occupied. This law, found in ORS 97.890-920, requires the governing board of the cemetery, in this case the Metro Council, to declare a grave that has been sold but unoccupied for more than 40 years to be abandoned, uncared for and unused. The cemetery may then file a complaint in circuit court and provide published public notice to the record owners of the unused grave and their heirs, asking them to assert their ownership rights. If the owners do not respond and claim the grave, the court may then declare the grave abandoned and a common nuisance, and may place a cemetery lien upon the grave, allowing it to be foreclosed upon and returned to the cemetery. The cemetery may then sell the grave to someone else who wishes to be buried at Lone Fir.

Metro Parks and Environmental Services requests that the Metro Council begin the process set forth above by declaring the unused Christenson grave to be a common nuisance and an abandoned and unused portion of Lone Fir Cemetery, and directing Metro's Chief Operating Officer to file a complaint in Multnomah County Circuit Court, requesting a judgment declaring the grave a common nuisance, and providing that a lien be filed and foreclosed returning the grave to Metro.

ANALYSIS/INFORMATION

1. **Known Opposition** None known, Metro is unable to locate the Christenson family.
2. **Legal Antecedents** ORS 97.870-920 - Unused and uncared for portions of cemetery declared common nuisances
3. **Anticipated Effects** The Christenson grave will be declared abandoned and a common nuisance, and the Metro Chief Operating Officer will be authorized to file a complaint in Multnomah County Circuit Court, notifying the Christenson family and parties claiming through them that Metro considers the grave abandoned and a common nuisance, and requesting that they appear and take responsibility for the grave. If the Christenson family and interested parties claiming through them fail to do so, the court will issue a judgment declaring the grave to be a common nuisance, create a lien upon the grave in favor of Metro, provide that the lien be foreclosed, and authorize the grave to be returned to Lone Fir Cemetery.
4. **Budget Impacts** Costs of public notice and court filing fees. Outside legal representation if necessary.

RECOMMENDED ACTION

Michael Jordan, Chief Operating Officer, with the concurrence of the Council President David Bragdon, recommends adoption of Resolution No. 10-4181.