

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE  
METRO ATTORNEY TO DEFEND, APPEAL, OR  
COMMENCE LITIGATION RELATED TO  
OWNERSHIP OF BURIAL RIGHTS AT  
METRO'S HISTORIC CEMETERIES

) RESOLUTION NO. 15-4629

) Introduced by Chief Operating Officer Martha  
Bennett in concurrence with Council  
President Tom Hughes

WHEREAS, in 1994 Metro assumed stewardship over fourteen historic cemeteries from Multnomah County; and

WHEREAS, the historic cemeteries were established between 1848 and 1914 and originated under private ownership, each with its own distinct management style and system of records; and

WHEREAS, due to antiquated and incomplete records, Metro staff faces challenges distinguishing owned burial spaces from those that are not owned; and

WHEREAS, Metro is aware of burial spaces that have, or may have, two owners; and

WHEREAS, Metro desires to initiate a legal action to resolve the ownership conflict; and


WHEREAS, pursuant to the Metro Charter, Section 25(2), the Metro Council has created by ordinance the Office of Metro Attorney, as codified in the Metro Code Chapter 2.08; and

WHEREAS, the Metro Code provides in Section 2.08.030 and Section 2.08.040 that the Metro Attorney is charged with general control and supervision of all civil actions and legal proceedings, and to appear, commence, prosecute, defend or appeal any action, suit, matter, cause or proceeding as requested in the district's interest and in the discretion of the Metro Attorney; and

WHEREAS, it is in the district's interest to appear, commence, prosecute, defend or appeal an action, suit, matter, cause or proceeding related to Metro's historic cemeteries; now therefore

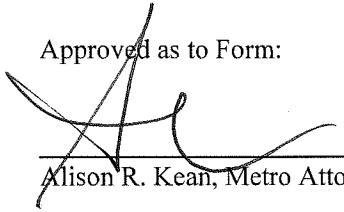
BE IT RESOLVED that the Metro Council hereby requests and authorizes the Metro Attorney to appear, commence, prosecute, defend or appeal any action, suit, matter, cause or proceeding in any court or tribunal, whether in the name of Metro or the Metro Council, when, in the discretion of the Metro Attorney, the same may be necessary or advisable to protect Metro's rights and interests related to Metro's historic cemeteries.

ADOPTED by the Metro Council this 7th day of May 2015.

  
Tom Hughes, Council President



Approved as to Form:



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Alison R. Kean, Metro Attorney

## **STAFF REPORT**

### **IN CONSIDERATION OF RESOLUTION NO.15-4629, FOR THE PURPOSE OF AUTHORIZING THE METRO ATTORNEY TO DEFEND, APPEAL, OR COMMENCE LITIGATION RELATED TO OWNERSHIP OF BURIAL RIGHTS AT METRO'S HISTORIC CEMETERIES**

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Date: May 7, 2015  
(503)

Prepared

by: Melisa McDonald  
797-1856

## **BACKGROUND**

In 1994, Metro assumed stewardship over fourteen Historic Cemeteries from Multnomah County. Each cemetery has its own unique system of historic records, leading to significant challenges distinguishing owned and unowned burial spaces. In 2008, a report by independent auditor Moss Adams cited two instances where Metro cemetery employees had resold owned but unused burial spaces to unrelated third parties. Upon subsequent review of cemetery records, Metro staff discovered additional resolds and confirmed that Metro did not follow the appropriate legal process prior to resale, creating a conflict between historic and modern purchasers.

In 2012, the Oregon legislature passed Senate Bill 1537 (SB1537), since codified as ORS 97.725, which allows cemetery authorities to utilize an administrative process to recapture interment rights to burial spaces that are "unclaimed." Between July 2013 and June 2014, Metro undertook an extensive notification and outreach effort aimed at resolving burial right conflicts through the SB1537 process. These efforts culminated with the passage of Resolution No. 14-4528 (For the Purpose of Declaring Certain Unclaimed Burial Spaces Abandoned Pursuant to Senate Bill 1537), through which 517 conflicts were resolved in favor of modern purchasers.

The passage of Resolution No. 14-4528 represented a significant milestone, but it did not address all of the ownership conflicts caused by resold interment rights. Many affected burial spaces are not currently eligible for reclamation through the SB1537 process because Metro has record of contact with the historic purchaser's family within the last seventy-five years. Furthermore, Metro staff continue to meticulously review and scrutinize historic cemetery records, which has led to the discovery of additional, previously unknown historic purchases that are in conflict with modern sales. As a result of these limitations, Metro requires this more all-encompassing strategy in order to ensure that modern purchasers' rights are honored.

This resolution authorizes the Metro Attorney to participate in legal actions, on behalf of Metro and the Metro Council, related to Metro's Historic Cemeteries. Before initiating any action, Metro staff will conduct an extensive notification and outreach effort, similar to the one undertaken for the SB1537 process, to identify original owners of conflicted burial rights. Specifically, Metro will post notice at affected cemeteries and in the Oregonian for at least four successive weeks. Metro will also individually reach out to historic purchasers or their descendants in interest if contact information is available.

## **ANALYSIS/INFORMATION**

### **1. Known Opposition**

There are no known opponents to the proposed legislation.

## **2. Legal Antecedents**

Metro Code Sections 2.08.030 and 2.08.040.

## **3. Anticipated Effects**

The proposed legislation would authorize the Metro Attorney to participate in legal actions related to ownership of burial rights at Metro's Historic Cemeteries. Metro staff will engage in notification and outreach measures targeted at historic purchasers and their descendants prior to undertaking any such action.

## **4. Budget Impacts**

All costs are currently budgeted.

## **RECOMMENDED ACTION**

Metro staff recommend approval of Resolution No. 15-4629.