

# CEMETERY MORATORIUM - UPDATE

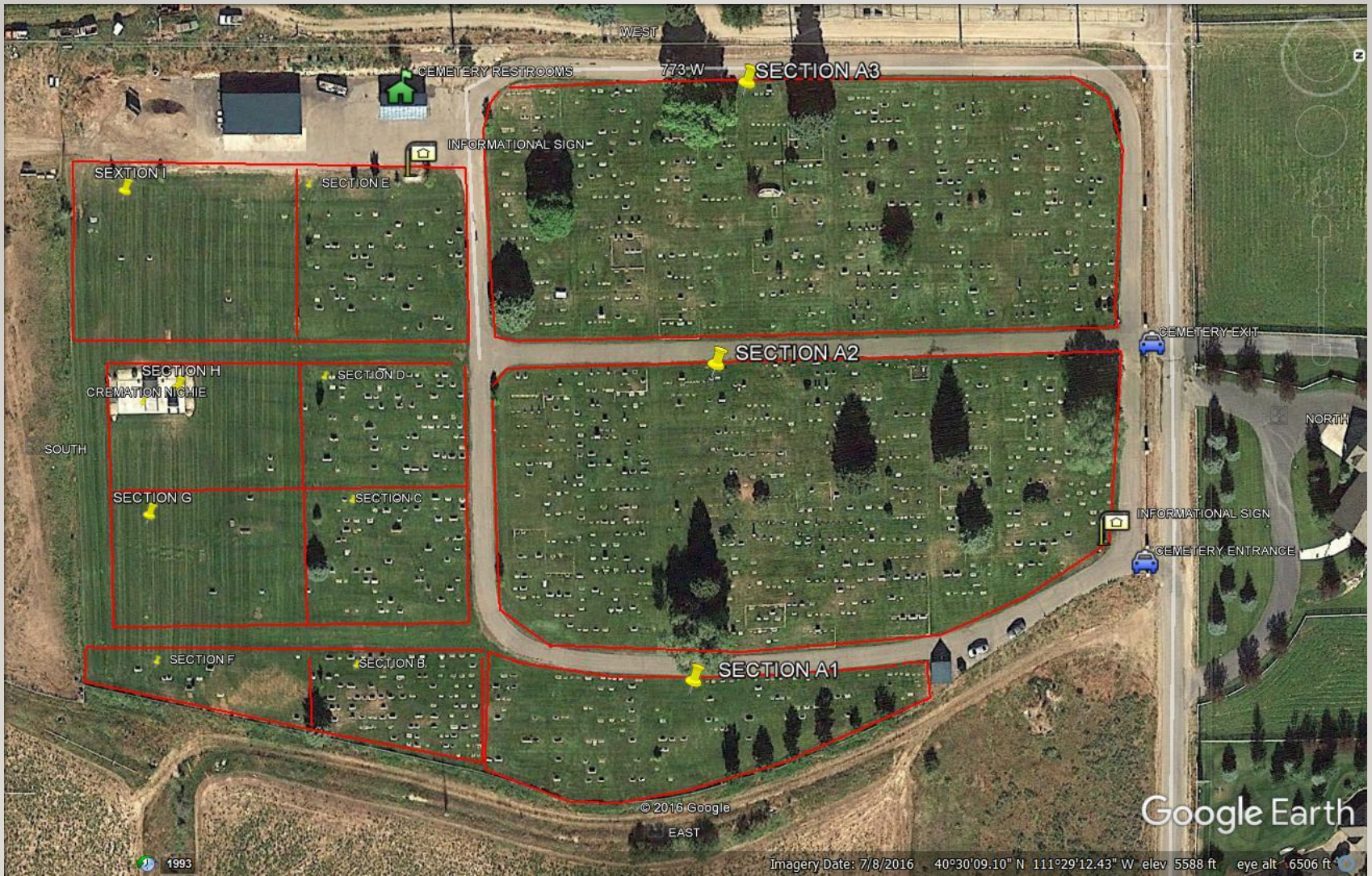
CITY ATTORNEY



# MIDWAY CITY CEMETERY DISCUSSION

DECEMBER 7, 2021







# CEMETARY OVERVIEW

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- Established in 1881
- Total Graves: 7900
- Total Buried: 2200
- Total Graves Sold: 7600
- Numbers Buried Per Year: 60-80 (this year was 100-120)
- Future Expansion: 2000-3000 graves (if we stack graves this number could double)

# MAJOR ISSUES

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- **PROVING OWNERSHIP:**

- Graves have deeds and are considered a property interest
- They cannot be transferred without showing someone has authority through probate to transfer the interest
- Numerous graves are stranded in the names of people who died four generations ago (i.e. they cannot show the title to the graves were transferred)
- Trying to accommodate families has created confusion, liability and consternation
- We currently have a request to disinter a person based on a claim the person had no right to be buried in the grave

- **UNRESTRICTED PURCHASE OF GRAVES BY ONE FAMILY**

- There are large portions of the cemetery that will never be used because the graves are held in the name of someone from four generations ago who still owns 45 unused graves
- The City must implement a policy to allow the purchase of graves in small numbers to avoid this problem



# TWO WAYS TO UPDATE TITLE

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- **STATUTORY QUIET TITLE:**

- There is a statutory process that allows title to any grave unused for over 60 years to be retaken by the City.
- There are approximately 500 to 600 of these graves
- We are proceeding with the process to quiet title to these graves

- **REQUIRE TITLE TO BE UPDATED THROUGH PROBATE BEFORE A GRAVE MAY BE CLAIMED:**

- Many families with forty or fifty graves that are still in the name of the person who bought them
- We have tried to accommodate these families by not requiring probate which has created litigation
- We propose that families be required to update title through probate to clearly establish who has the right to the grave

# UNUSED PLOTS OVER 60 YEARS OLD

- Sections A-2 and A-3 have a significant number of unused plots that are more than 60 years old (prior to 1961) (500 to 600).
- State law allows the City to initiate “Quiet-Title” Proceedings in Court to forfeit those plots.
- We are working to identify the number of plots in this category.
- We are recommending the adoption of an updated ordinance to allow the City to proceed with the forfeiture actions.

# UNKNOWN OWNERSHIP OF PLOTS LESS THAN 60 YEARS OLD

- We have an even greater number of unused plots that have been paid for but are less than 60 years old.
- These plots were often purchased by residents in bulk. The original purchaser has passed away, and the City does not have any record of transfer of those Plots to succeeding owners.
- These plots can't be forfeited according to State Law, so we have to implement a policy and procedure for determining ownership.
- We are recommending the adoption of a new ordinance that would not allow the use of these lots until the family can demonstrate the right to update title through formal probate documents.



## UNRESTRICTED PURCHASING OF PLOTS

- Contrary to our initial belief, the main problem does not really seem to be non-residents purchasing plots.
- Instead, residents, including some of the oldest family names in Midway, were allowed to purchase an unlimited number of plots for their extended families.
- Even after amending the plot purchasing policy people got around that by having each adult family member purchase the maximum number of plots.
- The result is large portions of the cemetery are tied up for decades.
- We recommend a new ordinance limiting the purchase of plots and preventing family members from getting around the existing restrictions.
- We need your thoughts and guidance on this – it is not an easy issue.

# DEMAND EXCEEDS THE CITY'S ABILITY TO CREATE NEW PLOTS

- Without implementing changes to the ordinances, policies and procedures, the City cannot create new sections of the cemetery fast enough.
- Even if we create a new section, we cannot allow purchases of an enormous number of plots by one person or one extended family.
- For example, if Shane developed a new Section with 400 plots, 10 families could purchase forty plots each and we would be in the same position again.
- We are working on developing a new proposed policy regarding limitations on plot purchases.

## UNCONVENTIONAL PLOTS

- Some of the older burials occurred in an unconventional alignment.
- Some of the vaults are overlapping plot lines or take up two plots.
- We recommend using ground penetrating radar to locate the vaults and correct these issues.



## INCOMPLETE RECORDS -

- Sections A-1 and A-2 of the Cemetery were started 142 years ago (approx. 1881)
- Some burials took place outside the original boundaries of the Cemetery and were not recorded with the City.
- Record keeping was inaccurate, or non-existent
- As a result, there are many plots that we simply do not have accurate information about.
- We are working to remedy that by identifying existing information, sending out mailers, and adopting a new process for claiming plots and updating records.