

Department of Consumer Affairs
Cemetery and Funeral Bureau

Initial Statement of Reasons

Hearing Date: July 12, 2012

Subject Matter of Proposed Regulations: Cemetery Maintenance Standards

(1) Section(s) Affected:

Adopt section: 2333

Specific Purpose of each adoption, amendment, or repeal:

1. Problem being addressed:

This section is necessary to implement SB 1490 (Ducheny, Chapter 401, Statutes of 2006), establishing the minimum maintenance standards necessary to prevent the offensive deterioration of a cemetery.

2. Anticipated benefits from this regulatory action:

The maintenance of a cemetery so as to prevent offensive deterioration, including the collection of trash and debris, and the requirement to trim and mow landscaping, will protect the health and welfare of California residents, promote worker safety, and the state's environment by eliminating health and fire hazards presented by inadequately maintained cemeteries.

Factual Basis/Rationale:

SB 1490 added Section 9612 to the Business and Professions Code. This statute requires the Bureau to adopt regulations establishing minimum standards of maintenance for endowment care cemeteries under its jurisdiction. The statute requires that the Bureau consider differences in cemetery size, location, topography, and types of interments, as well as the extent to which funds are available from the cemetery's endowment care funds to perform maintenance. Further, Business and Professions Code Section 9612 states that these cemetery maintenance standards shall not supersede any standards of a higher level of care prescribed by the governing body of any city or county under Health and Safety Code Section 8115.

The Bureau has consulted with stakeholders (licensees, consumer advocates, and members of the public) on numerous occasions about the required cemetery maintenance standards. Bureau Public Advisory Committee meetings in 2006, 2007, 2008, and 2010 included cemetery maintenance standards discussions, and the Bureau held a publicly noticed Cemetery Maintenance Standards Workshop (Workshop) in March 2011. This Workshop was followed by a smaller Cemetery Maintenance Standards Focus Group with a select group of Workshop attendees in order to refine the draft language that was presented at the June 17, 2011 Advisory Committee Meeting. Based upon the comments from stakeholders at that meeting, the Bureau revised the language into the final draft for the proposed regulation's specific language.

The Bureau determined the provision(s) of subsection (b) is necessary to give cemeteries without existing maintenance standards, or with inadequate maintenance standards, a minimum list of the items most often remarked upon by consumers as lacking adequate care. The provision(s) of subsection (c) is necessary because many cemeteries have their own existing written rules and regulations that cover cemetery maintenance, and as long as those rules and regulations cover the basic areas outlined in subsection (b), the Bureau felt it would be burdensome to require cemeteries to discard their existing standards in favor of the Bureau's. However, if cemeteries don't have any maintenance standards, they must adopt the minimum standards set forth in subsection (b). The provision(s) of subsection (f) is necessary to provide increased transparency in business by ensuring that a consumer is educated about their ability to request and receive a copy of the cemeteries rules and regulations regarding cemetery maintenance, whether those standards are a copy of subsection (b) or the cemeteries own rules and regulations under subsection (c) of this proposed regulation. A better understanding of the rights and obligations of both the consumer and the cemetery regarding the maintenance of the property should lead to fewer complaints. For example, a consumer may purchase interment rights in early spring when the cemetery is green and lush due to abundant rain, but be unaware that the cemetery is under watering restrictions the majority of the year, leading to a drastically altered appearance in late summer.

Underlying Data:

1. Minutes from Advisory Committee Meetings in 2006, 2007, 2008, and 2010.
2. Economic Impact Assessment.

Business Impact:

This regulation will not have a significant adverse economic impact on businesses. This initial determination is based on the following facts or evidence/documents/testimony:

Many cemeteries already have some form of maintenance standards in accordance with Health and Safety Code Section 8300, and all licensed cemeteries are already subject to the provisions of Health and Safety Code Section 8115. Printing costs associated with subdivision (f) are estimated at \$200 annually. Additionally, existing law, Health and Safety Code Section 8728, allows the interest from the endowment care fund to be spent by the cemetery in order to cover the cost of maintaining the cemetery.

This regulation may have a significant adverse economic impact on businesses. It might impact the following types of businesses:

It would impose the following reporting, recordkeeping, or other compliance requirements: Subdivision (f) would require the cemetery to provide a written copy of cemetery maintenance standards to the contracting consumer upon request. The proposed regulation also includes a provision in subdivision (g) for the cemetery to review the amount collected for the endowment care fund and to raise the fee if the current funding is insufficient.

Description of alternatives which would lessen any significant adverse impact on business (which includes small business):

A previous draft of the proposed regulation included provisions for a new performance measures report to be created by the Bureau, and cemeteries would then have been required to file this report annually to allow the Bureau to analyze their annual maintenance expenditures. This was determined through stakeholder meeting to be too burdensome to business, and was not included in the final draft.

Specific Technologies or Equipment:

This regulation does not require the use of any specific technologies or equipment.

Consideration of Alternatives:

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

Alternative 1: Status Quo. This alternative, though suggested by the Advisory Committee at the November 18, 2008 meeting, was not a viable alternative as Business and Professions Code Section 9612 mandates the Bureau to adopt cemetery maintenance standards regulations.