

**Rules and Regulations
for the
Memorial Garden
at the
Church of the Holy Nativity**



The Episcopal Church of the Holy Nativity

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For the mutual protection of every patron as hereinafter defined, there are hereby adopted the following rules and regulations of the columbarium to be situated by the makai garden alongside The Church of the Holy Nativity and to be known as the Memorial Garden of The Church of the Holy Nativity, hereinafter referred to as the Memorial Garden.

All patrons and visitors within the Memorial Garden and all rights sold or contracted for in the Memorial Garden shall be subject to these rules and regulations and such amendments thereof as shall be adopted by the Church, represented by and acting through the Vestry, and the reference to these rules and regulations in any contract with a patron issued pursuant thereto shall have the same force and effect as though set forth in such contract.

RULE 1: Definitions

The following words shall have the following meanings in these rules and regulations or in any contract relating to the Memorial Garden, unless the context requires a different construction:

- (1) **Memorial Garden** means the Memorial Garden of The Church of the Holy Nativity.
- (2) **Rules and Regulations** mean Rules 1 to 15, inclusive, of these rules and regulations, and any additions, amendments or alterations hereafter adopted.
- (3) **Church** means the parish of Holy Nativity, located at 5286 Kalaniana'ole Highway, Aina Haina, Honolulu, City and County of Honolulu, State of Hawaii.
- (4) **Vestry** means the members of the Vestry of the Church or any other governing body of the Church which may be hereafter legally substituted for the Vestry.
- (5) **Rector** means the Rector of the Church, or in the event there should be no Rector, then the Clergyman who is acting Rector at the time.
- (6) **Committee** means the Memorial Garden Committee of the Church.
- (7) **Patron** means a person (or persons) who has (or have) contracted for the use of a niche and his/her (or their) heirs, executors, administrators, legal successors and assigns.
- (8) **Niche** means a specified rectangular space or compartment in the Memorial Garden, to be designated by number or other appropriate means of identification in which a memorial urn (or two such urns) is placed.
- (9) **Urn** means a permanent-type rectangular-shaped container in which cremated human remains are to be placed.
- (10) **Memorial Urn** means an urn containing cremated human remains.
- (11) **Inurnment** means the placement of a memorial urn in a niche for perpetual or temporary care.
- (12) **Perpetual Care** means ordinary maintenance and repair of the Memorial Garden, including landscaping and general maintenance of the garden and the portion of the Church containing the Memorial Garden, so as to create an atmosphere of peace and repose. Perpetual care does not mean any reconstruction or repair of the Memorial Garden necessitated or caused by the elements, acts of God, common enemy, thieves, vandals, explosions, unavoidable accidents, invasions, insurrections, riots, or damage resulting by order of any military or civil authority.

RULE 2: Supervision of Memorial Garden

- (1) The Church operates under the direction of its Vestry and Rector, and the Memorial Garden is a part thereof. The Vestry, in turn, has delegated to the Committee certain of its powers with respect to the operation of the Memorial Garden. The Committee, among other things, is authorized to recommend to the Vestry any changes that may be required from time to time in the rules and regulations.

- (2) The Memorial Garden, as part of the Church premises, shall be under the day-to-day direction and supervision of the Rector and the Committee, and either is empowered to enforce the rules and regulations and to exclude from the property of the Church any person violating them. All questions regarding the day-to-day operations of the Memorial Garden shall be referred to the Rector or to such persons on the Church staff, either clergy or lay employees, as the Rector may designate, or to the Committee.
- (3) Employees of the Church shall not execute any work or carry out any orders except upon order of the Committee or the Rector. It is the duty of the employees to refer, to the Committee or the Rector, persons desiring their services in connection with the Memorial Garden.

RULE 3: Eligibility for Purchase of Niche and for Inurnment

Subject to the approval of the Church, represented by and acting through the Vestry, and subject to the provisions of these rules and regulations, the purchase of a niche or niches and inurnment in the Memorial Garden is available to: any present or past communicant of the Church, and any member of the immediate family; any member of the Protestant Episcopal Church in the United States of America; and any other person who may be approved by the Vestry.

RULE 4: Charges

- (1) The Church, represented by and acting through the Vestry, shall fix the charge for each niche and reserves the right to increase, decrease or waive any such charge; PROVIDED, HOWEVER, that no change in charge shall be retroactive so as to increase the price paid or contracted for a niche prior to the effective date of such change. All charges shall be payable in legal tender of the United States of America.
- (2) Any patron desiring to contract for temporary care only shall nevertheless be required to pay the entire charge for perpetual care in a niche, under an appropriate agreement for refund of excess, as determined by the Vestry to be fair, upon removal of the memorial urn from the niche.

RULE 5: Funds

- (1) The proceeds of the sales of niches will be used:
 - (a) First to pay the costs attributable to the development, promotion and construction of the Memorial Garden;
 - (b) Then to provide perpetual care and to establish a Perpetual Care Fund in a sufficient amount that the estimated income therefrom will pay the cost of perpetual care; and

- (c) Any additional proceeds will be turned over to the General Church Fund, to be used at the discretion of the Vestry for the benefit of the Church.
- (2) All money received from the sale of the niches shall be deposited in such bank or trust company as shall be designated by the Vestry from time to time.
- (3) The Perpetual Care Fund shall be invested by the Vestry in such securities as are recognized under the laws of Hawaii as prudent investments for fiduciaries. Income from the Perpetual Care Fund shall first be applied to the care and maintenance of the Memorial Garden, and may thereafter be applied to any other Church purpose. If at any time the income shall not be sufficient for such care and maintenance, then the principal of the Perpetual Care Fund may so be used.

RULE 6: Property Rights of Patrons

- (1) All rights to the use of a niche granted to a Patron by the Church shall be presumed to be the sole and separate property of the person or persons named as grantee or grantees in the Certificate granting such rights.
- (2) If an inurnment has not been made in a niche the right to the use of which has been granted by the Church to a Patron, or if all memorial urns have been lawfully removed therefrom without transfer to another niche in the Memorial Garden for the account of the same Patron, the right to the use of such niche shall upon the death of such Patron, in the absence of the specific disposition thereof by the Patron's Last Will and Testament, descend in the regular line of succession to the heirs-at-law of the Patron.

RULE 7: Transfer or Assignment

- (1) A transfer or assignment of the right to use any niche shall not be valid without the prior consent of the Committee endorsed upon the instrument of transfer or assignment, and the transfer or assignment shall thereupon be recorded upon the books of the Church; PROVIDED, HOWEVER, that in case of a transfer by Will, consent thereto may be given after the death of the Patron.
- (2) The Committee may refuse to consent to a transfer or assignment so long as there is any indebtedness due from the Patron.
- (3) Any transfer of rights to the use of niches shall be subject to such charge as shall be prescribed by the Church, represented by and acting through the Vestry, which charge must be paid when the transfer is recorded unless the charge is reduced or waived by the Vestry.

RULE 8: Inurnment and Removal

- (1) Only cremated human remains shall be inurned in the Memorial Garden.

- (2) Cremated human remains shall not be inurned or stored in any niche and no engraved inscription shall be made upon the plaque of any niche unless the full charges for such niche have been paid, except in special cases in which such charges have been reduced or waived.
- (3) The Church, represented by and acting through the Vestry, reserves the right to refuse inurnment and to refuse to open any niche for any purpose, except on written application by the Patron or his/her personal representative submitted on a form provided by the Church and duly filed with the Committee.
- (4) The number of memorial urns interred in a niche shall not exceed the number so authorized in the written agreement by which the right to the use of such niche has been purchased.
- (5) The Church, represented by and acting through the Vestry, reserves the right to insist upon at least twenty-four (24) hours notice prior to any inurnment and at least three (3) secular days notice prior to any removal of any memorial urn.
- (6) Any inurnment and any removal of a memorial urn must be made at the time and in the manner and upon such charges as required by the Church, represented by and acting through the Vestry, and the Committee
- (7) All arrangements for any service in connection with the Memorial Garden, and all inurnments including the handling and disposition of flowers, shall be under the direction and supervision of the Rector or his/her assistant.
- (8) When a memorial urn is within the confines of the Memorial Garden, no person shall be permitted to open such urn without the consent of the Rector or his/her assistant and the personal representative of the decedent, or without a Court order.
- (9) Neither the Church nor the Vestry nor the Committee shall be responsible for any inurnment permit or for the identity of the person whose cremated remains are sought to be inurned.
- (10) Removal of a memorial urn so that the right of use of the niche may be sold for profit or removal contrary to the express or implied wish of the original Patron is forbidden.
- (11) The Church, represented by and acting through the Vestry, reserves the right notwithstanding any provision of these rules and regulations or of any contract relating to a particular niche or niches, to remove a memorial urn from any niche and to place such urn in any other niche in the Memorial Garden with proper transfer of plaque whenever in the unanimous judgment of the Vestry such removal is proper due to passage of time and improbability that any person will desire to visit the niche from which the memorial urn is to be taken or for other similarly valid reasons. The Church also reserves the right in the event of the abandonment of the present Memorial Garden and the construction of a new memorial garden to remove memorial urns from the former Memorial Garden and to inter them in appropriate niches with appropriate plaques in such new memorial garden.

RULE 9: Inscription

- (1) The engraving upon the plaque of each niche shall be of the uniform size and style determined by the Vestry.
- (2) The inscription shall consist of the name of the decedent, the year of birth and the year of death.
- (3) An inscription order form will be provided by the Church, to be filled in either on the typewriter or printed in ink, and signed by the person entitled to do so. Arrangements for the engraving, in accordance with the information so furnished, will be made by the Committee. The Church, Vestry and the Committee shall be responsible only for such errors in the inscription as may be made by the engraver in deviating from the information set forth in the signed inscription order form.

RULE 10: Decoration of Niche

- (1) No flower receptacle may be placed on or in any niche, and the only flowers or plants which may be placed in the Memorial Garden shall be those permitted by the Committee.
- (2) The use of felt, crushed silk or satin or other cloth in any niche is prohibited.
- (3) The placing of boxes, cans, shells, toys, wreaths, metal designs, ornaments, signs, cards, furniture, vases, pictures, artificial flowers, flags, or any other such article, emblem or ornament shall not be permitted in the Memorial Garden, and if so placed, the Committee reserves the right to have the same removed and disposed of without notice and without liability.

RULE 11: Perpetual and Temporary Care; Honorary Inurnment

- (1) The purchase of the right to the use of a niche shall carry with it the right to perpetual care as defined in, and subject to the conditions provided by, these rules and regulations.
- (2) The certificate of right to perpetual care and these rules and regulations and any amendments thereto shall be the sole agreement between the Church and the Patron. The statement of any agent or employee of the Church shall in no way bind the Church.
- (3) The Church, represented by and acting through the Vestry, may permit honorary inurnment without charge with the right to perpetual or temporary care in a niche not contracted for by any Patron.

RULE 12: Protection Against Loss

- (1) The Church, represented by and acting through the Vestry, shall take reasonable precaution to protect Patrons and their property rights in the Memorial Garden from loss or damage, and may carry such insurance relating to the Memorial Garden and contents as the Vestry

sees fit. There is no obligation upon the Church, the Vestry or the Committee to provide any insurance for the benefit of the owners of inurnment rights, and the Church, the Vestry and the Committee disclaim all responsibility for loss or damage for causes beyond reasonable control and especially for damage caused by the elements, acts of God, common enemy, thieves, vandals, explosions, unavoidable accidents, invasions, insurrections, riots, or order of any military or civil authority.

RULE 13: Change of Address of Patron

- (1) Each Patron has a duty to notify the Church of any change in his/her post office address.
- (2) Notice sent to a Patron at the last address on file in the office of the Church shall be considered sufficient and proper notification for all purposes.

RULE 14: Modification and Amendment

- (1) Special cases may arise in which the literal enforcement of a rule and regulation may impose unnecessary hardship. The Church, represented by and acting through the Vestry, therefore reserves the right without notice, to make exceptions, suspensions or modifications in any of these rules and regulations when in the judgment of the Vestry such action appears advisable; and such temporary exception, suspension or modification shall in no way be construed as affecting the general application of such rule and regulation.
- (2) The Church, represented by and acting through the Vestry, may and it hereby expressly reserves the right to adopt new rules and regulations or to amend, alter or repeal any rule or regulation or portion thereof.

RULE 15: Vote by Vestry; Proportion Required

- (1) Except as expressly provided to otherwise, whenever under these rules and regulations action is required to be taken by the Vestry, a vote of the majority of the members thereof authorized to be elected or constituted for the current year shall be required; PROVIDED, HOWEVER, that in order to be valid, any action providing for charges for niches, or abandonment of the Memorial Garden and transfer thereof to a new site, or exceptions, suspensions or modifications, or amendments must be adopted by vote of at least three-fourths of such members.

CERTIFICATE

I hereby certify that the foregoing rules and regulations relating to the Memorial Garden of the Parish of Holy Nativity were duly adopted by a majority, to wit of the members of the Vestry present at a meeting duly called, on June 19, 1962.

DeLos A. Seeley
Acting Secretary of the Vestry
Parish of Holy Nativity

Revised by Holy Nativity Vestry on April 15, 2014.