



# Update

## A COUNTY SUPERVISOR'S VIEW OF PUBLIC CEMETERY DISTRICTS

*By Keith Corum, Chair  
Glenn County Board of Supervisors*

We are fortunate in California to have public cemetery districts because not every state has these resources available to its residents. Many of my relatives are buried in a small cemetery in Southwest Missouri. Missouri does not have cemetery districts so each cemetery is on its own. These cemeteries rely on the families of those buried there for support. In practice, funding is minimal and most of the donations received are used to mow the lawns during the summer months.

In California many of our public cemetery districts have a similar problem. Some districts are very small, and both tax and service revenues are minimal which results in the cemetery being able to do very little other than mowing the lawn occasionally. In Glenn County, a small county of approximately 28,000 people, we have seven cemetery districts. Five of these districts are small and struggle financially. They also struggle to keep members on their Boards of Trustees. Services for these small districts are generally handled by arrangement with the two larger districts.

County Supervisors appoint Trustees to the boards. When there are not enough board members it is impossible for the cemetery district to make any decisions—operational, financial, legal or otherwise. These small districts were created many years ago when the small communities they served were vibrant. Through the years the populations in these communities have dwindled. “Outsiders” have moved in and have no relationship to those buried in the “local” cemetery.

Consequently, it is becoming more and more difficult to get individuals to volunteer to serve as Trustees on the cemetery district Boards.

The Public Cemetery District law emphasizes that the purpose of a cemetery district is to serve its “community.” The Legislature repeatedly used the term “community” when enacting the revised Public Cemetery District law in 2013. In the years since most districts were formed, however, the very idea of “community” has evolved. Previously people were much less mobile, stores and other services were more available locally, it was difficult to travel by buggy or horseback further than a few miles, and those difficulties limited the scope of what people saw as their “community”. That changed with the automobile and good roads. Small local stores and businesses vanished, families became more widely dispersed, and the “community” grew much larger. The Legislature recognized this change in 2016 when it enacted legislation acknowledging that the South Lake Tahoe local “community” included small towns on the Nevada side of the lake and authorized the Happy Homestead Cemetery District to inter residents from those towns.



When I was elected a County Supervisor and began to understand the problems of these very small cemetery districts my first thought was “why don’t two or three districts combine?” I soon found out that even though a district struggles financially, has trouble maintaining a Board of Trustees, and cannot perform their own services they do not want to merge with another district. Each district wants to maintain its “local turf.” Consolidating districts can be a difficult and time-consuming process, and it is certainly easier with district support. It is my opinion that legislation is needed to facilitate the merging of small cemetery districts into larger, more economically and operationally viable units.

Smaller districts also could merge with a larger district but there seems to be the same opposition. In such cases, the merger could be structured to ensure the small district has representation on the resulting entity’s Board of Trustees,

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*(Please let us know if you have particular issues or questions you would like to see addressed in a future edition of the Update.)*



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## FROM THE PRESIDENT

BY CHERYL SMITH, PRESIDENT



### PCA DIRECTORS & CANDIDATES

*Pictured above is your current PCA Board of Directors. Four seats are up for election this year. Candidates are needed to run for election to these positions.*

*Trustees and Managers who are committed to helping the PCA and our member districts succeed will be ideal candidates. Please let us know if you're interested in running, or if you know of a Trustee or Manager you would like to nominate.*

*Nominations will close June 30 with election in July or August. Let us know if you have any questions. Please get your nominations in to Bob Hunt at [hunt@pacbell.net](mailto:hunt@pacbell.net).*

As we look forward to 2021 I'm hopeful that the worst of the COVID-19 pandemic is behind us and we can return to "normal." Whether that means the PCA will be able to hold its annual conference this year remains to be seen, but that doesn't mean that the PCA won't continue its efforts to serve its members.

The PCA was established to be a "resource for all public cemeteries." Stated simply, our primary goal is to help

public cemeteries be successful in providing services to their communities. In addition to our "Update" newsletter, occasional "News & Notes," Zoom trainings and so forth, the PCA makes other valuable resources available to its members. Not only do members have access to Bob Hunt to help explain the intricacies of the law and answer other questions, our PCA Board members bring many

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## FROM THE PRESIDENT

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years of cemetery district experience to help you.

Through the course of the last 25 years, our “ways of doing things have changed,” and not just with the ways we operate our cemeteries. Did you know the State of California has 227 different State agencies and departments? Nearly all of them have rule-making authority of one sort or another. We can be required to follow those rules. Luckily for us, however, we need to work with only a few of those agencies and rules.

For instance, Off-Road Diesel Reporting...although at first glance this looks simple just open the reporting form and things get messy fast. There is a “Small Fleet BACT Annual Exemption.” Small fleet operators may request the BACT exemption under section 2449.1(b)(3)(C) of the In-Use Off-Road Diesel. We understand the Health & Safety Code, but this code wanders into the twilight zone. I’ll bet some of our Board members or other managers can help you with this—give them a call.

Many of the reporting requirements with which a special district is burdened can be daunting, but the PCA is here to help you. For example, quickly approaching is our due date (April 20, 2021) for submitting the 2020 Government Compensation in California (GCC) report. New this year is including compensation paid to elected officials and/or board members reported on IRS Form 1099. (You might review Bob Hunt’s “Ask Bob” column in the Winter 2021 “Update” newsletter on this issue.)

Or perhaps your District is considering a remodel, expansion, or other public works project this year? (See Mark Velasquez’ article in the Winter 2021 “Update” newsletter.) Gone are the days when you could call your local contractor, get a bid, and start the project within a month. First you must register your project with the Department of Industrial Relations, then jump through hoop after hoop going through the bidding process. Then if you are lucky the project will break ground next year.

Of course, when all of the red tape is swept aside we each must continue to provide services to our families; maintain our landscaping, buildings and equipment; make sure our employees are safe, well-trained, and service-oriented; manage budgets and finances, and plan for the next 50 or 100 years! Piece of cake—right?

As overwhelming as these situations may sometimes seem, the Public Cemetery Alliance is here to assist you! Our Board members have a combined total of over 100 years of experience managing a cemetery, filling the role of a trustee, providing safety and risk management training, and handling legal and employment issues—among about a thousand other things. There isn’t much we haven’t seen!

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*Cheryl*



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# A Funeral Director's Perspective

*By Eric S. Smith  
President, CFDA*



Over the past year the COVID-19 pandemic has resulted in many changes in how we do business. As funeral directors, we fully understand that we and the cemeteries we work with have the same goal—to serve our families during their times of need. Meeting those needs has been a challenge for both funeral directors and cemeteries.

Most funeral directors work with several different cemeteries on a regular basis. Every cemetery has different rules and regulations that funeral directors must comply with. We try to learn about those different rules but keeping up with them can sometimes be challenging. To compound the problem, however, during the current pandemic many cemeteries have either changed existing rules or adopted new procedures, or both.

The number one challenge funeral directors face is communication with each district about a district's rules and regulations. To avoid problems and make the services we provide to families as seamless as possible, it is important that every district keep funeral directors apprised of that district's procedures and requirements. Put it in writing and make sure to get it to those funeral directors you work with. Don't surprise funeral directors with a new or changed procedure you haven't let

them know about. Also let families know about any requirements your district may have—do you have a printed handout to give them?

Do you let funeral directors know your scheduling procedures? Is your office open to serve families on a walk-in basis or do you require appointments? Do you limit the hours or days on which your district will conduct services? Are you limiting the number of services each day? Do you let funeral directors know that a day is fully booked? Are your employees available to assist with the service? Do you limit the number of attendees at a funeral service? Are there requirements regarding masks, social distancing or other safety precautions? All of these are important pieces of information that must be communicated to funeral directors to avoid conflicts and awkward problems.

Common questions funeral directors have when talking to cemetery districts would include service times allowed, what time does cemetery staff expect services to be concluded in time to complete their work, does the cemetery provide pallbearers, chairs, tents, microphone and speakers and at what cost? Do you allow for witnessing the casket being lowered?

Communication is not a one-time affair—districts must continually keep funeral directors informed of rules, regulations, scheduling issues and anything else that may affect our ability to provide service to families. Of course, funeral directors must recognize that communication is a two-way street—we must stay in touch with cemeteries. It is also important that funeral directors let cemeteries know if we have concerns that aren't being met, or if we have suggestions for alternate ways of meeting challenges.

Full and regular communication is the key to a successful working relationship between cemeteries and funeral directors. We want to follow your rules and regulations, and we need to better understand the problems you face. Only through real communication can we both provide great service to our families and enjoy a productive relationship.

*Eric Smith is a Funeral Director in Paradise and Oroville, California. He is the current President of the California Funeral Directors Association.*

## A SUPERVISOR'S VIEW

*(Continued from page 1)*

thus protecting the local community's interests. In addition, the larger district would have some additional income, even if small, and the smaller district would have the benefit of increased financial and operational resources of the larger district. Equipment and day-to-day management and operations would cover the "merged" cemetery district. As it is, many of these small districts can't even afford a lawnmower or legally required audits, let alone day-to-day operations and management.

What does the future hold? It is my belief that some of these small districts will be "forced" to merge with a larger district simply to ensure that services continue to be provided to the small cemeteries and the residents they serve. I would recommend that the Public Cemetery Alliance lead the way in this effort to help all cemeteries, both small and large, to provide adequate services and ensure all our cemeteries are well cared for.

*Bob Hunt, PCA General Counsel, provided assistance with this article.*



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# Performance Evaluations

*By Bob Hunt*

For most supervisors and managers, conducting a face-to-face performance evaluation is the most stressful work task they will face all year. The same is true for employees. It's very uncomfortable to judge another person or, for the employee, to be judged. But it must be done and doing it correctly and constructively can be, despite the tension, the most positive work guidance an employee can receive.

As lawyers will tell you, there is little more damaging to an agency's defense of a lawsuit than the lack of performance evaluations or, worse, glowing evaluations that fail to truly reflect an employee's performance or behavior issues.

The sit-down with the employee is only the final step in the evaluation process. The entire process must be structured as a standard practice and set down in a written policy and procedure. Let's break the process down into a few component parts.

## What Is A Performance Evaluation

A performance evaluation is just that—an evaluation of an employee's performance. It is a time to tell the employee your assessment of his or her performance.

An evaluation is **not** (or should not be) an exercise from which a pay increase is either expected or guaranteed. The separation between evaluations and pay increases should be made clear to employees, usually in the employer's policies or handbook, but also at the time of the evaluation itself. To the extent an employee's performance **merits an increase** this may be the time for it to be awarded, with emphasis on the fact that it is an **earned merit** increase, not an entitlement.

## When

When are performance evaluations done? Many supervisors and managers perform evaluations on all their employees at the same time each year. This is an invitation for the supervisor to whip



through them without giving any real thought to each aspect of every employee's performance. This is a disservice to both employees and employer.

Instead, recommended practice is to conduct evaluations on anniversaries—the anniversary of the employee's date of hire, or promotion to his or her current position, and so forth. No matter which anniversary is selected, it serves to separate the employee from all other employees, giving the supervisor adequate opportunity to carefully consider and assess each employee's overall performance.

A performance evaluation should also be done when an employee is on probation. A formal written evaluation should always be conducted in such cases no less than two weeks before the sched-

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# Spring Brings a New Beginning

*By Mark Marshall*

This past year has been an unusual time for all of us, and I for one am happy to put most of the challenges that faced me behind and move on to a brighter day ahead. As spring approaches and the flowers bloom, the days seem to become longer, warmer, and more inviting to spend time outside, I am grateful. This is a time of year for renewal and celebration as well as a time to look forward to projects that we have not been able to accomplish over the past year and a time to renew our relationships with our friends and fellow cemetery acquaintances. A time for new beginnings.

As one of the Public Cemetery Alliance (PCA) Board members I would like to ask each of you to reach out to a few of the cemetery managers, employees, or trustees to encourage them, if for no other reason, just to say hello and tell them that you were thinking of them. I believe that we would all enjoy a friendly voice that was simply saying, I was thinking of you, and just wanted to know how you are? I believe we will triumph over this difficult event and will be stronger for it. I would also like to ask each of you reading this to become more involved in the PCA. To help the Board give you as members more of what you need to provide a high level of service to your public as well as your fellow employees and Trustees. Here are a couple of things that you can do to help; 1) Communicate to us, your PCA Board, what you would like

to see us focus our efforts on to provide you with the resources you desire. 2) Become an advocate for the PCA and ask non-members as well as suppliers to join the PCA so that we will become stronger. 3) Bob Hunt spends countless hours working on this newsletter and is often looking for articles to keep this document newsworthy as well as educational. Please consider writing an article or suggest a topic you would like us to consider.

The Public Cemetery Alliance is your organization and to keep it strong we need your help and participation, please consider getting involved. Today is a time for a New Beginning and a time for an exciting new future for the PCA. Join us!

I wish you a warm and Happy Spring filled with new beginnings.

*Mark is a PCA Director and Safety Officer with Golden State Risk Management Authority.*



## Ask Bob . . .

*By Bob Hunt*

**Question:**

**What are the rules for disciplining employees?**

A very big question that can't be covered in a single article. The fact is that districts should establish their own "rules", policies and procedures that comply with the multitude of laws.

Let's first look at "at will" employment. California law provides that employees with no employment contract, no union contract (or MOU), or no civil service protections are presumed to be employed "at will." (Labor Code § 2922.) This means that either the employee or the employer may terminate the employment relationship at any time, with or without notice and with or without cause.

But let's stop right there. In the real world juries are skeptical that any employer would terminate a "good" employee for no reason. Relying on "at-will" status gives the employee a great opportunity to allege that the discipline was based on discrimination, retaliation or another wrongful purpose. If there is cause to terminate, document it and say

so. It is never a good idea to discipline an employee without cause.

A disciplinary process must be structured to recognize and protect both the employer and the employee. This starts with a written policy. Good policies should describe reasons for imposing disciplinary action, potential types and levels of discipline, who may impose discipline, recourse the employee may have (such as a "Skelly" hearing), and a process for the employee to appeal the discipline.

It's not possible to list every possible reason for which an employee may be disciplined. Therefore, such reasons should be described in general terms, but be as inclusive as possible. Types and levels of discipline are frequently described as "progressive discipline." In both of these cases, a policy should clearly state that the policy is guidance only and does not deprive the employer of the right to vary from reasons and levels.

For small agencies the question of who has the authority to impose discipline can be tricky. Boards should clearly articulate to managers the limits of their authority to discipline without prior Board approval.

A "Skelly hearing" isn't a hearing at all—it is a process by which intended discipline is reviewed by a independent, unbiased third party. A Skelly hearing officer has no power or authority to overrule or modify the intended discipline, but only to make recommendations to the employer. At will employees are generally not entitled to Skelly hearings; however, for severe discipline employers would be well advised to offer such a hearing.

An important step frequently overlooked is what I refer to as the "54957

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# Ask Bob . . .

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letter.” Most employee issues are heard by boards in closed sessions. Gov. Code § 54957 provides that “[a]s a condition to holding a *closed session* on specific *complaints or charges* brought against an employee” the employee must be given written notice of his right to have the matter heard in *open session*. Failure to give the notice invalidates any action the board may take.

Finally, a policy should provide an employee with the right to appeal the intended discipline. Appeals are generally heard by the agency’s governing body. Again, in smaller agencies appeals can be a bit awkward because the governing body is frequently the entity that imposed the discipline in the first place. Nonetheless, an appeal does give the employee an opportunity to defend him or herself.

Imposing any discipline is a high-risk activity. Obviously, this article cannot address the entire disciplinary universe. Districts should consult their counsel for guidance at every step of the process.



*Articles in this issue are for informational purposes only and not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to any particular issue or problem. Use of any information contained in these articles does not create an attorney-client relationship between the reader and Robert W. Hunt or any other attorney or author.*

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## Performance Evaluations

*(Continued from page 9)*

uled end of the probationary period. This will allow sufficient time to properly assess the employee's progress instead of trying to make an informed decision at the last minute. This will also allow time to determine next steps—whether the employee has displayed sufficient progress to end the probationary period, whether the period needs to be extended, or in the event the employee has failed to work out to terminate him or her before the end of the probationary period.

Evaluations also are necessary when an employee is placed on a performance improvement plan (PIP). An important part of any PIP is a series of interim assessments (weekly, bi-weekly, etc.), and these should be scheduled at the beginning of a PIP. These are informal discussions with the employee about his or her performance versus the supervisor's expectations. Although usually oral, short informal memos are very helpful. However, at the end of the PIP period, a written performance evaluation should be done, again no less than two weeks before the end of the period for the same reasons as in probationary periods.

A last time to conduct a performance evaluation is any time a supervisor or manager feels it is necessary. Sometimes it is simply necessary to get an employee's attention, to let him or her

know that they are headed in the wrong direction, and what needs to be done to stop the behavior or lack of acceptable performance. If you're in this situation, don't wait until the annual evaluation—do it whenever you deem it helpful or necessary.

### Expectations

Perhaps one of the major sources of performance problems is the failure to make sure employees are fully aware of the supervisor's expectations. We hear repeatedly "I didn't know that's what you (supervisor) wanted." Make sure this isn't the situation between you and your employees.

Many commentators refer to "performance planning." This generally involves a session at the beginning of the performance year during which the supervisor lets the employee know, in explicit terms and preferably in writing, the goals and expectations of the employee for the coming year. Listen to the employee's own ambitions and goals, are they consistent with yours? Performance planning sessions also give the supervisor the right to hold the employee accountable for meeting the goals and expectations expressed at the beginning of the year. Many effective managers share a copy of the performance evaluation form with the employee at the beginning of the year so the employee will have a better idea what criteria will be assessed. The

bottom line is to clearly explain to the employee how you will evaluate his or her performance.

Evaluation is not just a beginning-and end-of-year chore. The employee should never hear about good performance or performance in need of improvement for the first time at your formal performance evaluation. Every supervisor should have periodic, informal, discussions throughout the year with each employee. These should be focused on and limited to the employee's performance and progress on meeting your expectations and goals. If the employee is doing well, these are great opportunities to provide positive reinforcement. If they are struggling or off the mark, these are the times to make sure they understand exactly what it is you expect of them, or to hear their problems and what might be preventing them from meeting your expectations, or to offer guidance or other assistance to help them succeed.

It is unfair and unreliable to prepare performance evaluations based on your memory of the employee's performance throughout the year. Such attempts will almost always unfairly reflect the supervisor's impressions of the employee's performance of only the last several weeks or a month. Instead, every supervisor should make notes throughout the year about an employee's performance, both positive and negative. These notes

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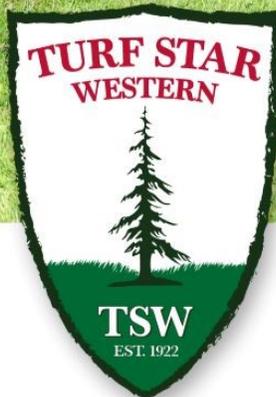
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# Performance Evaluations

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should be kept in a confidential “desk” file, not the personnel file, and referred to when preparing the evaluation.

Performance is a two-way street, and supervisors and managers play an active and crucial part in every employee’s performance.

## The “Tool”

Obviously, the form used is the heart of the matter—what criteria are you evaluating? What constitutes an employee’s “performance” and how do you get it down on paper? We are all familiar with evaluation forms that list many criteria, but are those criteria really indicative of a particular employee’s performance? Should managers, supervisors, foreman, groundskeepers, mechanics and office personnel all be evaluated by the same criteria? NO. Doing so is neither fair nor helpful.

The district must develop evaluation criteria that, first, reflect the elements that are important to performing the duties of each position and, second, realistically delve into an employee’s performance of those criteria. What we are looking for is what part this position plays in the mission of the agency and how this employee fulfills the requirements of that position. For small agencies, this may mean a different evaluation form for each position; for larger agencies it’s possible that several similar positions can utilize a single evaluation form.

Consider the criteria against which an employee will be weighed. Is it really necessary that a groundskeeper have exceptional written communication skills? Is it important that a manager or supervisor have those same skills? If you have only one or two groundskeepers, how important is reliability? Might a lack of reliability impact your ability dig a grave or conduct a service? And what if there is only one person in the office and they fail to show up on time to handle families? Differences in positions and duties should be reflected in the evaluation forms you use to assess performance.

The above demonstrates the necessity of organizing and structuring a performance evaluation program in advance and incorporating that program into a written policy.

## Preparation

About two to four weeks before an annual evaluation is due ask the employee to write down a few things he or she has accomplished and what goals they believe they have achieved. Take that into consideration when you are preparing the written evaluation.

Then complete the performance evaluation form in a way which objectively assesses the employee’s performance over the entire evaluation period. Never let an evaluation be colored by an event of the past few weeks—positive or negative. The desk file documentation that you maintained during the year will serve you well in completing the evaluation form.

Give the employee the performance evaluation a day or two in advance so they don’t walk into the performance

meeting cold or with unfounded expectations. Give them time to read and digest the contents of the evaluation.

Prepare for the discussion with the employee. Never go into a performance review without preparation. If you wing it, performance reviews fail. You will miss key opportunities for feedback and improvement, and the employee will not feel encouraged about his successes.

## Meeting With the Employee

The spirit in which you approach this conversation will make the difference in whether it is effective. If your intention is genuinely to help the employee improve, and you have a positive relationship with the employee, the conversation is easier and more effective.

No employee’s performance is completely negative. If it is, why does the employee still work for your organization? When you meet with the employee, spend time on the positive aspects of his or her performance. Discussion of the positive aspects of performance, along with how the employee can grow her value to the district, should comprise most of the discussion.

But don’t neglect the areas that need improvement either. An underperforming employee especially needs to hear and understand their issues—speak directly, don’t mince words, do not be misunderstood. “Soft pedaling” the issues will prevent the employee from understanding the seriousness of the performance situation. The same holds true for goal setting. Clearly identify your expectations of the employee for the coming year and include a timeframe. Discuss how “success” will be measured.

In both positive and negative cases, use examples to demonstrate your evaluation. Be sure those examples are for the period under review—not from years earlier.

“Conversation” is the keyword. If you are doing all of the talking or the meeting becomes a lecture, the performance review is less effective. The employee will have no confidence in the validity of your comments and believe he or she is being treated unjustly. This is not how you want employees feeling as they leave their performance reviews.

Always end on a positive note. The employee is more likely to leave the meeting feeling motivated and hopeful rather than criticized and discouraged.

## Final Words

Supervisors and managers are also judged and evaluated. How did you evaluate, hold accountable, re-direct poor behavior or performance, and what steps did you take to help your employees develop and improve? Always bear in mind—an employee’s success is also yours.

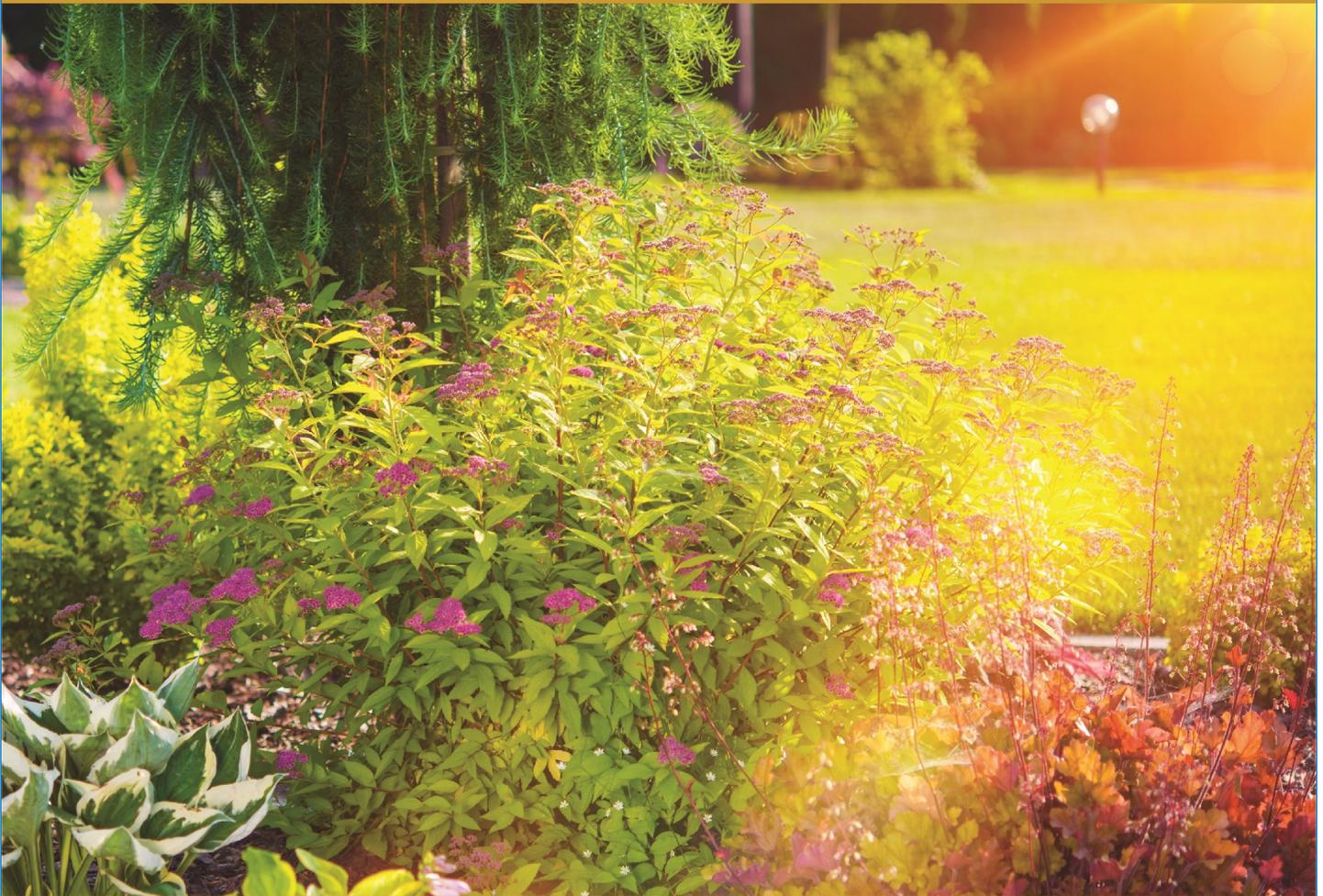




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