

CHAPTER 15

CEMETERY ORDINANCE

15.1 - TITLE AND PURPOSE

The title of this Ordinance is the "Town of Theresa Cemetery Ordinance." The purpose of this Ordinance is to regulate the construction, management, operation, and platting of cemeteries, the burial of human corpses, and other cemetery uses and activities in the town.

15.2 - AUTHORITY

The town board of the Town of Theresa has the specific authority under s. 157.50 (2), Wis. stats., and general authority under its village powers under s. 60.22, Wis. stats., to adopt this ordinance.

15.3 - ADOPTION OF ORDINANCE

This ordinance, adopted by a majority of the town board on a roll call vote with a quorum present and voting and proper notice having been given, provides for the regulation of the construction, management, operation, and platting of cemeteries and the burial of human corpses and other cemetery uses and activities in the town, including cemeteries that are not owned, operated, or controlled directly by the town.

15.4 - DEFINITIONS

In this ordinance:

- A. "Burial" means entombment, inurnment, or interment and "bury" means to entomb, inurn, or inter.
- B. "Cemetery" means any location for burial of human remains in the town.
- C. "Human remains" means the body of a deceased individual that is in any stage of decomposition or has been cremated.
- D. "Lot" means a single grave lot platted in accordance with Section VI, whether or not occupied by a grave. "Block" means containing multiple lots platted in a delineated parcel and designated on the certified survey map by consecutive number.
- E. "Outer burial container" means any container that is placed or intended to be placed into the burial excavation of a grave and into which a casket is placed or intended to be placed at the time of burial.
- F. "Sexton" means a town employee or independent contractor employed or retained by the town board to administer, repair, maintain, manage, and operate a town cemetery or any part of the operations of a town cemetery consistent with this ordinance. In the event no person is specifically designated as "sexton" by the town board, "sexton" means any person or committee designated to act administratively and to manage, operate, maintain, and provide care for the town cemetery or any part of the operations of any town cemetery pursuant to this ordinance.
- G. "Town" means the Town of Theresa, Dodge County, Wisconsin.
- H. "Town board" means the board of supervisors for the Town of Theresa, Dodge County, Wisconsin, and includes designees of the board authorized to act for the board.
- I. "Town cemetery" means a municipal cemetery owned, operated, and maintained by the Town of Theresa, Dodge County, Wisconsin, under s. 157.50, Wis. stats., that is located within the town.
- J. "Town chair" means the chairperson of the Town of Theresa, Dodge County, Wisconsin.
- K. "Town clerk" means the clerk of the Town of Theresa, Dodge County, Wisconsin.

- L. "Town treasurer" means the treasurer of the Town of Theresa, Dodge County, Wisconsin.
- M. "Wis. stats." means the Wisconsin Statutes, including successor provisions to cited statutes.

15.5 - STATEMENT OF POLICY

Every town cemetery is owned, operated, directly controlled, and maintained by the town for the benefit of all citizens. Persons of all denominations of all religions, sexes, creeds, and races, shall be allowed to be buried in a town cemetery. This ordinance, adopted pursuant to s. 157.50 (2), Wis. stats., governs the construction, management, administration, platting, maintenance, and operation of any town cemetery and of any new cemetery or expanded cemetery of any other type in the town, including cemeteries operated by associations, religious orders and societies, and privately owned, controlled, operated, and maintained cemeteries.

15.6 - NEW BURIALS, CEMETERIES AND CEMETERY LOTS, AND NEW OR EXPANDED CEMETERY OPERATIONS

A. Platting

Before any new block of any existing town cemetery or any other new or expanded cemetery in the town is opened for the sale of cemetery lots for burial of human remains after the effective date of this ordinance, the town board or the sexton for a town cemetery and any person or agent for any other cemetery in the town that is subject to s. 157.065, Wis. stats., shall cause the blocks and lots to be platted and recorded in the Office of the Register of Deeds for Dodge County, Wisconsin, in accordance with s. 157.065, Wis. stats.

B. Single grave section

The town board or the sexton shall designate, for any town cemetery, certain lots as a single grave section, and the lots within each grave section shall be platted and sold as single-grave lots. Unused portions of grave sections repossessed under chapter 157, Wis. stats., for nonpayment of assessments for care shall likewise be designated and sold as single-grave lots.

C. Purchase of new lands

The town board or the sexton shall not purchase any land for cemetery purposes without approval of the electors of the town at a regular or special town meeting.

D. New or expanded cemeteries

No person or authorized agent of any cemetery may conduct any burial or construct, manage, plat, or operate any new or expanded cemetery of any type in the town, after the date of adoption of this ordinance, without written permit approval of the town board. Approval, approval on condition, or denial of a permit shall only be made after a public hearing with a class 2 notice under chapter 985, Wis. stats. Any new or expanded cemetery to be approved by the town board shall be, at minimum, properly platted and filed with the town clerk and recorded in the Office of the Register of Deeds for Dodge County, Wisconsin. No cemetery shall be located, established, or dedicated contrary to s. 157.065 or 157.128, Wis. stats. The minimum cemetery acreage must be at least five contiguous acres at platting dedication. No cemetery shall be located, established, or dedicated in violation of a town, county, or other zoning ordinance.

E. Burial on private land

Burial of human remains on private property in the Town of Theresa is prohibited.

15.7 - PURCHASE OF LOTS IN TOWN CEMETERY

A. Price of lots

The town board shall from time to time by resolution fix a price on all lots to be sold for burials in any town cemetery with the entirety of the purchase price deposited into the Town of Theresa general fund.

B. Sales of lots

1. Persons, or their authorized agents, desiring to purchase a lot in any town cemetery for burial are referred to the town board, town clerk, or sexton. The town board, town clerk, or sexton shall have available suitable plats showing size and price of lots, and any other information that may be required, and render assistance to those desiring to make lot purchases. The town board, town clerk, or sexton shall issue a lot order for a selected lot to the prospective purchaser, or his or her agent, who shall present the order at the office of the town clerk. Upon receipt of proper payment to the town treasurer, the town chair and town clerk shall sign and issue a cemetery lot deed. The original deed from the town and the records of the cemetery kept by the town clerk or other designee of the town board are the only evidence of title to any lot.
2. Persons conveying any cemetery lot in any town cemetery shall comply with s. 157.08, Wis. stats., and this ordinance.

15.8 - OWNERSHIP RIGHTS OF BURIAL IN TOWN CEMETERY

A. Ownership conditions

1. The owner of a town cemetery lot, or his or her authorized agent, shall have the right to use a lot or portion of a lot for burial purposes only in accordance with the terms of this ordinance or any town cemetery bylaws and regulations.
2. Lots for which lot deeds have been issued by the town may not be subdivided except by consent in writing of the town board.
3. All repossessed vacant lots in any town cemetery when resold are subject to the same fees and charges as other unoccupied lots.

B. Burial

1. In this subsection, "relative" means a parent, grandparent, child, grandchild, brother, sister, parent-in-law, grandparent-in-law, brother-in-law or sister-in-law, uncle or aunt, and nephew or niece.
2. Any lot owner at any town cemetery acquires the lot solely for the purpose of burial of the owner at the time of the owner's death, and if the lot is owned jointly by spouses, either spouse is entitled to burial at that lot. The lot owner may grant written permission, which must be notarized and filed with the town clerk, for the burial of specific persons other than the owner and the owner's spouse. If more than one person has an ownership interest in the lot, the written consent of all persons having an ownership interest in the lot is required to permit the burial of a person other than an owner or owner's spouse.
3. Unless otherwise directed in a writing filed with the town clerk by the lot owner under paragraph 2, the town board or the sexton shall permit the burial of persons at any town cemetery lot at the request of any interested person upon proof of eligibility for burial at the cemetery lot as follows:
 - a. The lot owner, and surviving spouse of the lot owner, have the first right to burial or to direct the right of burial.
 - b. When there is no surviving spouse, the devisees or heirs of the owner may, by agreement in writing of all the heirs or devisees, determine who shall have the right of burial or direction for burial, which agreement shall be filed with the town clerk.
 - c. If no agreement under subdivision b. is filed, the town board or the sexton may determine use, giving preference to relatives in the order listed in paragraph 1.

C. Ownership rights

All burial rights in the cemetery lots located at any town cemetery and purchased from the town shall occupy the same position as real estate at the death of the owner. Only persons whose names appear on the cemetery records of the town will be recognized as owners or part owners of lots. Lot owners may not allow burials to be made in their lots for any remuneration or financial

consideration. In case of the death of a lot owner, when the cemetery lot is disposed of by a will, and when ownership is to be determined, a certified copy of the will or final judgment in the decedent's estate must be delivered to the town clerk before the town will recognize the change of ownership. If the deceased lot owner left no will satisfactory proof of descent must be provided. It is recommended that lot owners, in making their wills, include a provision covering the town cemetery lots and devise the lots to one person.

D. Resale

Lot owners may not resell or transfer lots or parts of lots in any town cemetery except back to the Town of Theresa for fifty percent of the original purchase price, with fifty percent being retained by the Town of Theresa and remaining in the general fund.

E. Reburial

1. In this subsection, "reburial" means to dis-entomb, dis-inurn, or dis-inter human remains that are buried in a cemetery and re-entomb, re-inurn, or re-inter the human remains in another grave, mausoleum space, or other place used or intended to be used for the burial of human remains that is located in the same cemetery.
2. Any reburial of any person buried in a town cemetery, or in any other cemetery in the town, shall comply with the provisions of s. 157.112, Wis. stats. Any person seeking reburial shall seek approval from the appropriate cemetery authority. A county authorization for dis-interment and re-interment shall be required prior to any reburial under s. 69.18 (4), Wis. stats.

F. Use of repossessed lots

Whenever possible, lots repossessed under chapter 157, Wis. stats., in any town cemetery will be resold and used for burials before new areas of the cemetery are used or platted.

15.9 - CARE OF LOTS AT THE TOWN CEMETERY

The town board will establish at their annual budget workshop an amount dedicated to be used for improvements and maintenance for town cemeteries, and subsequently approved by the electors at the annual budget hearing. Minimum maintenance will include an annual mowing. A record of authorization of expenditures for maintenance and improvements shall be kept in the office of the town clerk. The fund may be increased by gifts, bequests, a portion of memorial charges, and other service revenues. Gifts shall be received, kept, and maintained pursuant to s. 157.11 (8) and (9), Wis. stats. Nothing in this ordinance shall be construed as obligating the town as to any alleged existing contract as to perpetual care. The town board shall operate and maintain the town cemetery to provide proper and decent care of town cemeteries and the graves, and it may employ a sexton, staff and any independent contractor necessary to provide such care.

15.10 - PRIVILEGES AND RESTRICTIONS IN TOWN CEMETERIES

A. Mounds prohibited

No person may raise the level of the earth over any grave in a town cemetery above the general level of the cemetery lot.

B. Limitations on structures and urns

1. In this subsection "urn" means a vessel for the display of flowers or plants that is attached to a lot or is of such weight, as determined by the town board or sexton, that it cannot be readily moved from its placement on the lot. "Urn" does not include a vessel containing cremated human remains properly inurned on the lot.
2. No structures, hedges, fences, railings, embankments, depressions, or other enclosures of any kind are permitted on or around lots in any town cemetery. Wooden boxes, wire containers, glass jars, bottles, toys, cans, memorials, memorabilia, personal items, and other similar objects may not be placed on lots without written approval of the town board or the sexton, and if so

placed may be removed by the town board or the sexton without oral or written notice. Urns are not permitted at any town cemetery on lots sold after the passage of this ordinance. Urns existing in town cemeteries prior to the passage of this ordinance shall be removed by the town or the sexton as they become unsightly or deteriorated and shall not be replaced. Before an urn is destroyed or discarded, the last owner of record of the lot on which it is located shall be notified by registered or certified mail with return receipt requested by the town clerk that the urn has been removed from the lot and will be destroyed or discarded unless the owner of the urn claims it within 30 days after mailing of such letter.

C. Landscaping

All landscaping, mowing, and general care of lots, and other work, construction or maintenance in the town cemetery shall be performed by the town, by its officers, employees, independent contractors, or agents, including any sexton, unless otherwise provided in writing by the town board.

D. Access to lots; opening and closing of burial places

The town reserves the right for its officers, employees, contractors, and agents, including the sexton and the town board, necessary to the performance of normal town cemetery operations, to enter upon or cross over any lot in any town cemetery in the performance of any duties or work necessary under this ordinance. The town board, by its officers, employees, contractors, and agents, including the sexton, has the sole right to the opening and closing of burial places used or to be used for burial of human remains in a town cemetery, unless so ordered by a court of record to open or close such places.

E. No assumption of liability for damages

The town, and its officers, employees, contractors, and agents, including the sexton and the town board, assume no liability for damages to property or person, or for physical or mental suffering arising out of the performance of its normal operations related to the construction, management, operation, maintenance, care, and platting of any town cemetery, including care of the cemetery, any lot, and the graves, or for loss by vandalism or other acts beyond its reasonable control at a town cemetery.

15.11 - TOWN CEMETERY BURIALS

A. Daylight burials

Burials at any town cemetery shall be made only during daylight hours, unless with written approval of the town board or the sexton

B. Outer burial containers

All caskets placed in any town cemetery shall be vaulted and be made in a permanent material and not constructed of wood.

C. Grave digging

All graves at a town cemetery and any other cemetery in the town to be used for burials shall be opened and dug at no cost or expense to the town, but shall be under the direction of the town board or the sexton. The minimum depth of graves shall be established by the town board from time to time and all graves shall be dug in strict conformity with the town board policy then in effect.

D. Burial permit

No burial in the town cemetery shall be permitted until a legal burial permit has been issued by the town clerk or the sexton.

E. Maintenance of flowers, wreaths, and other personal items at burial sites

There shall be no responsibility on the part of the town, its officers, employees, contractors, or agents, including the sexton or other designees of the town board, for the protection and maintenance of flowers, wreaths, plants, emblems, urns, family or personal items, memorials, or

similar items used or placed at any town cemetery in conjunction with funerals or burials, including dis-interments or memorial events. The town board shall place or cause to have placed a notice of disclaimer of responsibility consistent with this subsection at vehicle access locations to each town cemetery.

F. Number of graves per lot

No lot at any town cemetery may be used for the burial of more than one body except in the following circumstances:

1. Two remains from cremation shall be allowed in one lot with one headstone or two flat markers to be placed only in line with other stones.
2. One full body and one remains from cremation shall be allowed in one lot, with one headstone or two flat markers to be placed only in line with other stones.
3. All cremation remains shall be placed in a permanent outer burial container not constructed of wood.

G. Seasonal burial; duty to bury

The town board or the sexton shall provide for cemetery services and burials at any town cemetery during each season, including winter, whenever practicable, in compliance with s. 157.114, Wis. stats. However, the town has no duty to bury, remove any human remains, or allow the burial or removal of any human remains, unless those requesting burial or disinterment are or will be in full compliance with this ordinance, state law, and any bylaws and regulation established by the town board. The town board may, at its discretion, charge additional costs to the person requesting burial in order to provide safe and timely access to and from the grave or burial site during burial services.

15.12 - TOWN CEMETERY MONUMENTS AND MARKERS

A. Setting grave markers

All markers and monuments must have a cement foundation. The construction of a foundation shall be of such size and design as will provide ample insurance against settlement or injury to the monument or marker as determined by the town board or the sexton. The top of the foundation shall be constructed flush with the ground line. Whenever possible, all markers shall be set with, at minimum, a 5-inch margin from the outer edges of the foundation.

B. Limitations

All of the following apply to monuments and markers in town cemeteries:

1. Only one monument or marker shall be allowed per lot.
2. No foundation marker or monument may be larger than the width of the lot or group of lots purchased. All monuments and foundations must be set in line with other monuments so far as possible as directed by the town board or the sexton. Government service monuments or markers shall be surface mounted or attached to the monument or marker. No monument or marker may be more than 5 feet in height.
4. Temporary markers shall be removed or replaced with a permanent marker within one year of burial.
5. A preneed marker may be placed on a lot or group of lots before burial.
6. No materials other than granite, marble, or standard bronze may be used for outside and above-ground portions of any marker or monument.
7. Within one year after burial a marker or monument identifying the burial shall be placed at the grave site.

C. Removal of monuments

A marker or monument, once placed at a town cemetery on its foundation, may not be removed, except by written permission of the town board or the sexton.

15.13 - TOWN CEMETERY VAULTS AND MAUSOLEUMS

Construction of vaults and mausoleums in any town cemetery is prohibited unless approved in writing by the town board.

15.14 - TREES, SHRUBS, FLOWERS, AND DECORATIONS AT TOWN CEMETERY

A. Allowed

Flowers may be planted within twenty (20) inches of the monument foundation. Statuary and other seasonal decorations must be secured to the area within twenty (20) inches of the monument foundation and must be maintained in acceptable condition.

B. Prohibited

No trees or shrubs may be planted on lots. Fences, hedges, enclosures and corner posts on lots are prohibited. Decorative objects such as wooden boxes, wire containers, glass jars, bottles, cans and other objects may not be placed on lots.

C. Removal

Seasonal decorations must be removed in a reasonable period of time by the person(s) who placed the decorations on the grave site. All rubbish must be taken out of the cemetery by the parties who originally brought the items to the grave site. Items may be removed by the town board or the sexton, at their discretion, if they become offensive, unsightly or undesirable.

15.15 - MISCELLANEOUS

A. Sexton

The town board, by resolution, may designate, retain, or employ a person as sexton or may designate any other person or committee to act administratively and to manage, operate, maintain, and provide care for the town cemetery or any part of the operations or of any town cemetery pursuant to this ordinance. The sexton may be a town employee or may, with proper insurance and indemnification protection for the town, its officers, employees, and agents, be an independent contractor or agent retained under written contract for a fixed time of years. The town board, consistent with this ordinance, shall designate the authority, responsibility, and duties to the sexton by written resolution. The town board shall be responsible for proper supervision of the sexton.

B. Amendment of ordinance

The town board reserves the right to amend this ordinance to conform to newly developed cemetery practices or any other legal purpose that the town board deems necessary and appropriate. A public hearing shall be held on the proposed amendment before the town board. Notice of the public hearing shall be an agenda item of the monthly town board meeting posted in concurrence with open meeting law.

15.16 - PENALTIES

A. Penalties

Any person who violates any provision of this ordinance or any bylaws or regulations shall, upon conviction, be fined and shall forfeit for any bylaw or regulation violation under s. 157.11 (2), Wis. stats., not more than \$10, and for a violation of this ordinance, not less than \$100 nor more than \$500 for each offense, together with the costs of prosecution. Each day a violation exists or continues constitutes a separate offense under this ordinance. The town board may withhold the issuance of any town licenses, authorities, grants, or permits and any additional cemetery lot purchases and permits for burial or disinterment until the violation has been abated and all penalties and costs satisfied.

B. Injunctive relief

In lieu of, or in addition to, any other penalty for a violation of this ordinance, the town board may seek to enjoin any continuing violation of this ordinance as provided in Ch 813, Wis. stats.

15.17 - EFFECTIVE DATE

This ordinance is effective on publication of notice and placing in the Town of Theresa Code of Ordinances and posting at designated locations within the Town of Theresa. The town clerk shall properly post or publish this ordinance, as required under s. 60.80, Wis. Stats.

Adopted this ____ day of _____, 2014

Paul Christian, Chairman

Perry Billings, Supervisor

Faye Beck, Supervisor

Attest: Diane Steger, Clerk