

208.1 Town of Berry Cemetery Ordinance

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SECTION I - TITLE AND PURPOSE

The title of this Ordinance is the "Town of Berry 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.

SECTION II – AUTHORITY

The Town Board of the Town of Berry 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.

SECTION III - 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.

SECTION IV - DEFINITIONS

In this ordinance:

- A. "Burial" means entombment, inurnment, or interment.
- 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.

- 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. "Town" means the Town of Berry, Dane County, Wisconsin.
- G. "Town Board" means the board of supervisors for the Town of Berry, Dane County, Wisconsin, and includes designees of the board authorized to act for the board.
- H. "Town cemetery" means a municipal cemetery owned, operated, and maintained by the Town of Berry, Dane County, Wisconsin, under s. 157.50, Wis. stats., that is located within the town.
- I. "Town chair" means the chairperson of the Town of Berry, Dane County, Wisconsin.
- J. "Town clerk" means the clerk of the Town of Berry, Dane County, Wisconsin.
- K. "Town treasurer" means the treasurer of the Town of Berry, Dane County, Wisconsin.
- L. "Wis. stats." means the Wisconsin Statutes, including successor provisions to cited statutes.

SECTION V - 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.

SECTION VI - PLATTING OF NEW 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 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 Dane County, Wisconsin, in accordance with s. 157.065, Wis. stats.
- B. **Single grave section.** The Town Board or the Town Chair 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 Town Chair 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 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 Dane 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 20 contiguous acres at platting dedication. No cemetery shall be located, established, or dedicated in violation of a town, county, or other zoning ordinance. The Town Board may require that the additional criteria be met for approvals of permits based on the proposed site's topography, surrounding lands, soils, proximity to flowing water, and likelihood of flooding.

SECTION VII - PURCHASE OF LOTS IN TOWN CEMETERY

[Reserved for future use]

SECTION VIII - OWNERSHIP RIGHTS OF BURIAL IN TOWN CEMETERY

[Reserved for future use]

SECTION IX - CARE OF LOTS AT THE TOWN CEMETERY

- A.. **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 Town Chair, staff, and any independent contractor necessary to provide such care.
- B. **General improvements.** The Town Board shall direct and administer all improvements and maintenance within the cemetery. The Town Board shall be responsible for determining proper and decent care of the cemetery. All graves shall be sodded and mowed, when determined necessary by the Town Board. The grade of the cemetery lots shall be determined by the Town Board. Resodding of existing graves or following disinterment will be done when determined necessary by the Town.
- C. **Veterans graves.** 1. Pursuant to s. 45.85, Wis. stats., the Town Board shall at all times see that the graves and tombstones of all veterans, including women's auxiliary organizations created by act of Congress, who shall at any time have served in any branch of the armed forces of the United States, and of the spouses or surviving spouses of all those veterans, receive proper and decent care, and may employ all necessary assistance to carry out this section.
2. Pursuant to s. 45.85 (1), Wis. stats., the expense of the care of the graves and tombstones shall be borne by the county where the graves are located, except where suitable care is otherwise provided and the amount of expense charged the county for the care may not exceed the charge made for the care of other graves in the same cemetery. The Town Board shall report to the Dane county clerk, on or before September 1 of each year, the locations of the graves cared for by the Town Board under s. 45.85, Wis. stats., together with the names of

the deceased and the amount claimed for care of the graves for the fiscal year from the previous July 1 to June 30

- D. **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 Town Chair 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 disinterments, or memorial events.

SECTION X - PRIVILEGES AND RESTRICTIONS IN TOWN CEMETERIES

- A. **Bylaws and regulations.** The Town Board may adopt bylaws and regulations for the management and care of any town cemetery and may enforce those bylaws and regulations under s. 157.11 (2), Wis. stats. The Town Board may require any person owning or controlling a cemetery lot to do anything necessary to comply with the bylaws or regulations by giving reasonable personal notice in writing if the person is a resident of the state, otherwise by publishing a class 3 notice, under chapter 985, Wis. stats., in the county. If the person fails to comply within 20 days thereafter, the Town Board may cause the action required to be done and recover the expense from the person required to take the action. The Town Board may also impose a forfeiture not exceeding \$10 for violation of the bylaws or regulations posted in 3 conspicuous places in the cemetery, recoverable under chapter 778, Wis. stats.
- B. **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.
- C. **Limitations on structures and urns.** 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 Town Chair, and if so placed may be removed by the Town Board or the Town Chair 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 Town Chair 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.
- D. **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, unless otherwise provided in writing by the Town Board.
- E. **No assumption of liability for damages.** The town, and its officers, employees, contractors, and agents, including the Town Chair 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.

- F. **Altering physical conditions.** The Town Board reserves the right to alter, change, or close alleys, roadways, walkways, water mains, and other physical public properties at any town cemetery.
- G. **Current Town Cemeteries are closed to new interment.**
- H. **Enforcement of regulations and ordinance.** The Town Board may appoint, with citation issuance and service powers, any employee or agent of the town, to administer and enforce its town cemetery bylaws and regulations and this ordinance.

SECTION XI - RULES FOR VISITORS TO TOWN CEMETERIES

- A. **Visiting hours.** Every town cemetery shall be open to visitors from sun rise to one-half hour after the official sunset. Permission to enter any town cemetery at any other time must be obtained from the Town Chair or the Town Board.
- B. **Children.** Children under 16 years of age shall not enter upon any town cemetery except when accompanied by parents or guardians, unless this requirement is waived in writing by the Town Chair or the Town Board.
- C. **Dogs and other animals.** Dogs are permitted in any town cemetery only when confined in a vehicle or if the dog is a service animal accompanying a person with sight-impairment or other disability while in the town cemetery. All other pets or domestic animals are prohibited without written consent of the Town Chair or Town Board, except a service animal other than a dog accompanying a person with sight-impairment or other disability while in the town cemetery.
- D. **Firearms.** Firearms are prohibited in any town cemetery except in conjunction with military funerals or specific memorial events permitted by the Town Chair or Town Board. At all other times, firearms, bows and arrows, slingshots, and other like articles are prohibited.
- E. **Visitors.**
 - 1. Visitors to town cemeteries are required to use existing walkways and roadways whenever possible.
 - 2. Except as provided in Section XV, no person in any town cemetery may do any of the following:
 - a. Pick or cut any flowers, either wild or cultivated.
 - b. Injure any shrub, tree, or plant.
 - c. Mar or deface any monument, stone, or structure.
 - 3. No person, except the owner of the cemetery lot, a person with the cemetery lot owner's consent, or a person with the written consent of the Town Board may do any of the following in a town cemetery:
 - a. Damage any grave or lot.
 - b. Remove, deface, mark, or damage in any manner any cemetery markers, headstones, monuments, fences, or structures.
 - c. Remove, damage, or destroy any vases, flower pots, urns, or other objects that have been placed on any cemetery lot.

- d. Move or remove any cemetery equipment without the written consent of the Town Board or the Town Chair.
 - e. Remove or damage any town cemetery property not included within subdivisions a. to d.
4. a. In this paragraph, "recreational activity" means any activity undertaken for the purpose of exercise, relaxation, or pleasure, including practice or instruction in any such activity. "Recreational activity" includes hunting, fishing, trapping, camping, bowling, billiards, picnicking, exploring caves, nature study, dancing, bicycling, horseback riding, horseshoe pitching, motorcycling, operating an all-terrain vehicle, ballooning, curling, throwing darts, hang gliding, hiking, tobogganing, sledding, sleigh riding, snowmobiling, skiing, skating, participation in water sports, weight and fitness training, sightseeing, rock climbing, cutting or removing wood, climbing observation towers, animal training, harvesting the products of nature, sport shooting, and any other sport, game, or educational activity.
- b. No person may loiter, cause a public nuisance, or engage in any sport or other recreational activity on any town cemetery property without the written consent of the Town Board.
- F. Vehicles.** 1. Motor vehicles traveling within any town cemetery may not exceed 15 miles per hour. No motor vehicle, except authorized maintenance vehicles for the town, shall be driven except on roadways designated for that purpose, nor shall any motor vehicles be driven in a reckless manner in the cemetery.
2. No person may ride, operate, or make use of any of the following vehicles in any cemetery unless the vehicles are present in conjunction with the town cemetery business or are authorized in writing by the Town Board:
- a. Snowmobiles.
 - b. Go-carts.
 - c. All-terrain vehicles.
 - d. Mopeds.
 - e. Play vehicles and other amusement vehicles, including any coaster, skateboard, roller skates, sled, toboggan, unicycle, or toy vehicle upon which a person may ride.
3. No person, without the written consent of the Town Board may park or abandon any motor vehicle in any town cemetery or upon any other location except a designated parking area; nor shall any person park or abandon a motor vehicle on any town cemetery property for any purpose except engaging in official cemetery business. Any motor vehicle parked more than 24 hours, without written consent of the Town Board shall be declared abandoned by the Town Board and may be towed or removed, or caused to be towed or removed, by the Town Board at the cost of the owner.
- G. Protection of cemetery property.** No person without written consent of the Town Board may do any of the following:
- 1. Trap, hunt, kill, injure, or disturb, or attempt to trap, hunt, kill, injure, or disturb any animal, bird, or waterfowl, wild or domestic.
 - 2. Climb any tree.

3. Break, cut down, trample upon, remove, or in any manner injure, deface, write upon, or damage any tree, shrub, flower, flower bed, turf, grassy area, soil, building, structure, equipment, official notice, sign, or other property within any town cemetery, except as otherwise provided in this ordinance.
- H. **Littering, soliciting, and advertising prohibited.** No person may litter, dump, or deposit any rubbish, refuse, earth, or other material, including any placement of advertising, in any town cemetery without the written consent of the Town Board or the Town Chair.
- I. **Sound devices.** No person may operate or play any amplifying system or sound device in any town cemetery without the written consent of the Town Chair or the Town Board.
- J. **Authorized notices.** No person may post, paste, fasten, paint, or attach any placard, bill, notice, sign, or advertising matter upon any structure, tree, or other natural object in any town cemetery, except with the written consent, or at the direction, of the Town Board. No person shall remove, deface, or damage in any manner any sign or notice posted in any town cemetery by or at the direction of the Town Board, unless approved by the Town Board.
- K. **Working in cemetery.** All contractors or other persons having work in the town cemetery shall notify the town clerk or the Town Chair prior to commencement of the work. All contractors or others doing work in the town cemetery are responsible for the cost for any damages or losses resulting from the work and shall promptly, upon determination of the amount of damages or loss by the Town Board, pay that sum to the Town Board.

SECTION XII - TOWN CEMETERY MONUMENTS AND MARKERS

- A. **Setting grave markers.**
 1. Grave markers, monuments, and foundations at any town cemetery may be set only after the person desiring to set the marker, monument, or foundation obtains a permit therefore from the office of the town clerk. Grave markers, monuments, and foundations at any town cemetery may be set by monument company employees or agents or other persons authorized by the lot owners, but not the Town. Except as otherwise provided in this ordinance, under no conditions will the Town Board or any Town employee construct monument or marker bases or erect monuments or markers on bases.
 2. 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 Town Chair. 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.
 3. The setting of grave markers, monuments, and foundations, and the transportation of all tools and related materials, within any town cemetery is subject to the supervision and control of the Town Board or the Town Chair. Unless special arrangements are made in writing with the Town Board, such work shall be conducted between the hours of 7 a.m. and 4 p.m., Mondays through Fridays, except national holidays. Truck operation is not permitted within any town cemetery when, in the opinion of the Town Board or the

Town Chair, the truck operation may cause damage to the driveways or other town cemetery property. Except with written permission of the Town Board or Town Chair, all work in the setting of grave markers, monuments, and foundations shall be completed promptly and debris removed immediately.

- B. **Limitations.** All of the following apply to monuments and markers in town cemeteries:
1. The Town Board or the Town Chair may refuse permission to erect any monument, marker, or foundation not in keeping with the good appearance of the grounds at a town cemetery. The size of any monument or stonework must be provided to the Town Board or the Town Chair and approved before any work related to any monument, marker, or foundation will be permitted on a lot in a town cemetery.
 2. Only one monument or marker shall be allowed per lot.
 3. 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 Town Chair. 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.
- 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 Town Chair.

SECTION XIII - TOWN CEMETERY VAULTS AND MAUSOLEUMS

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

SECTION XIV - TREES, SHRUBS, AND FLOWERS AT TOWN CEMETERY

- A. **Tree and shrub planting.** The planting at any town cemetery of trees and shrubs on newly purchased lots or parts of lots is prohibited except by written consent of the Town Board or the Town Chair.
- B. **Large tree removal.** Lot owners may, with the written consent of the Town Board or the Town Chair, remove large trees on or adjacent to cemetery lots in any town cemetery that hinder the full usage of the lot. The expense of the tree and stump removal shall be paid for by the lot owners.
- C. **Fresh flowers and flags.** All flower baskets at grave or lot sites at a town cemetery shall be removed by October 15 of each year. Fresh cut flowers may be used in any town cemetery at any time. Containers for cut flowers are to be of a type that is level with the ground surface and not holding water when not in use; or of the type to be disposed of when flowers are removed. All flags placed on graves for Memorial Day shall be removed by the day following Flag Day of that year.

- D. **Potted plants.** Potted plants at any town cemetery may be set on lots, without disturbing the sod, if removed within 5 days after being set. If a potted plant is not removed within 5 days of being set on the lot, the potted plant may be picked up and destroyed by the Town Board or the Town Chair of the town or removed and preserved for planting within the town cemetery.
- E. **Artificial flower decorations; baskets.** Artificial flower decorations are prohibited in any town cemetery unless in a vase or pot and when so used will be treated as potted plants. Unfilled or unsightly baskets will be removed from the lot by the Town Board or the Town Chair.
- F. **Flower beds.** Individual flower beds or growing plants other than trees or shrubs are permitted at any town cemetery but must be of a reasonable size as determined by the Town Board or the Town Chair. In case of doubt, the Town Board or the Town Chair of the town should be consulted. Flower beds or growing plants that are not maintained, become unsightly or undesirable, or are not of a reasonable size as determined by the Town Board or the Town Chair will be removed by the Town Board or the Town Chair.
- G. **Plant or flower removal.** Plants or flowers planted in a town cemetery may not be taken up or removed by any person, nor cuttings removed there from, without written consent from the Town Board or the Town Chair, except that plants in flower beds and growing plants authorized under subsection F may be removed or cut by the person who planted the flower bed or growing plant.
- H. **Vine, wreath, and memorial removals.** Vines that interfere with the proper care of lots or graves or injure or damage the grass will be removed from any town cemetery by the Town Board or the Town Chair when found objectionable. No real or artificial wreaths, temporary or permanent, nor memorial or personal memorabilia items will be allowed on lots or graves without written consent of the Town Board or the Town Chair.

SECTION XV - MISCELLANEOUS

- A. **Amendment of ordinance.** The Town Board reserves the right to amend this ordinance to conform with newly developed cemetery practices or any other legal purpose that the Town Board deems necessary and appropriate. Before this ordinance is amended, a public hearing shall be held on the proposed amendment before the Town Board. Notice of the public hearing shall be published in a local newspaper at least 10 days prior to the hearing.

SECTION XVI - 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 Section XI, subsection A, of this ordinance and 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.

SECTION XVII - EFFECTIVE DATE

This ordinance is effective on publication or posting.

The Town Clerk shall properly publish this ordinance as required under s. 60.80, Wis. stats.

Dated this 19th day of October, 2009

Published: November 5, 2009

Brenda Kahl, Clerk/Treasurer
Timothy Henneman, Sr, Supervisor
Jim Laubmeier, Supervisor

Anthony Varda, Chair
Chris Upper, Supervisor
Susan Studz, Supervisor