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DEAD PERSON ZONING

Planning and Zoning Workshop Packet

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Cemetery and Dead People Laws

Ohio Revised Code:

9.15	Indigent Burial
149.53	Disposition of Skeletal Remains
155.04	Veteran's Headstones
317.25	Veterans Grave Registration
CH 517	Township Cemeteries
CH 759	Municipal Cemeteries and Crematories
759.27	Union Cemeteries
1715.02	Sale of Unusable Cemetery Grounds (Religious/ Benevolent Organizations)
CH 1721	Corporate and Partnership Owned Cemeteries
1713.34	Medical colleges/embalming board bodies for study or dissection
2108.70-89	Human Bodies or Parts Thereof; Disposition of Remains
2909.05(C)	Vandalism Relating to Cemetery
2927.01	Abuse of Corpse
2927.11(A)(3)	Desecration at Cemetery, Indian Mound
3705.17	Burial Permits
3707.19	Disposal of body of person who died of communicable disease.
CH 4717	Embalmers, Funeral Directors, Crematories
4717.27	Disposing of cremated remains
CH 4767	Cemetery Registration

36 CFR Part 12 National Cemeteries

Family Cemeteries ORC §4767.02(C)

“[T]he term ‘family cemetery’ means ‘a cemetery containing the human remains of persons, at least three-fourths of whom have a common ancestor or who are the spouse or adopted child of that common ancestor.’”

Only requires the burial of one family member.

Township Cemetery (517.10)

The title to, right of possession, and control of all public cemeteries located outside any municipal corporation, which have been set apart and dedicated as public cemeteries, and any grounds which have been used as such by the public, but not expressly dedicated as a cemetery, except such as are owned or under the care of a religious or benevolent society, or an incorporated company or association, or under the control of the authorities of any municipal corporation, shall, severally be vested in the board of township trustees.

Any dedicated public cemetery outside of municipal corporation

AND

Any grounds (not dedicated but used as a public cemetery) that isn't owned by benevolent society, corporation/association, or under the control of a municipality

“Public Cemetery” does not include Family Cemetery.

Township Cemetery Fun Facts

Trustees must make and enforce rules regarding creating lots; (ORC §517.06)

Trustees may make rules regarding hours/access (517.12) (violation is a minor misdemeanor)
Trustees can appoint Cemetery Board (ORC §517.20)

Township must cut grass and weeds at least twice a year. (ORC §517.06)

BUT

Where the board of county commissioners has enclosed with a substantial fence of stone, iron, or posts and boards, all abandoned public cemeteries in the county, from which the remains of the dead have not been removed, the board of township trustees shall keep the fence in good repair, remove the undergrowth and weeds from such cemetery at least once a year (ORC §517.32)

Township can appropriate land, up to 10 acres (ORC §517.01)

NEW cemetery cannot be located less than 100 yards from a dwelling (ORC §517.01)

EXISTING cemetery can be increased but must be 50 feet from a dwelling. (ORC §517.13)

Crematory cannot be located less than 200 yards from a dwelling (ORC § 1721.18)

Township Cemetery Cost

Township can sell burial sites at cemeteries “at a reasonable price” (ORC § 517.07)

Proceeds from selling burial sites are to be used for cemetery purposes. (ORC § 517.08)

Township can reclaim unused gravesites sold prior to 1986 and unused mausoleums sold prior to 2015 if they remain unclaimed after notice process (ORC § 517.073)

Payment for a new cemetery must be submitted to voters unless cash on hand from 517.08 operations (ORC § 571.04) But requires unanimous consent of trustees to use the 517.08 proceeds.

Payments to expand an existing cemetery does not need to be submitted to voters (ORC § 571.13)

Township can pass levy:

For land (not to exceed ½ of one mill for not more than five years) (ORC § 517.13)

For maintenance (“sufficient for that purpose”) (ORC § 517.03);

For buildings on cemetery grounds (not exceeding five mills) (ORC § 571.19)

If a “public cemetery” operating within the unincorporated territory of a township wishes to convey its grounds to a township, the township must accept that conveyance and provide continued maintenance of the cemetery. UNLESS It’s a municipal cemetery, or the cemetery is owned by an entity (or a successor entity) that still owns or uses abutting property. (ORC 517.27) No Deed is necessary, by virtue of ORC 517.10 title automatically vest with township

Abandonment or Discontinuance of Cemetery

When a public or private cemetery has been abandoned or its determined that the further use for burial purposes of a cemetery will be detrimental to the public welfare or health, and a cemetery in the near vicinity is open for public use, the Township Trustees may order that the abandoned/detrimental cemetery be discontinued, remove all remains, remove all stones and monuments marking the graves and for the reinterment of the remains, and for the re-erection of those stones and monuments in suitable public ground in the near vicinity, all of which shall be paid for from the township treasury. (ORC 517.21)

Municipal Cemetery

Any dedicated public cemetery within a municipal corporation AND Any grounds (not dedicated but used as a public cemetery) within the municipality that isn’t owned by benevolent society or corporation/association.

Family cemeteries within a municipality are not municipal cemeteries

Municipal Cemetery Fun Facts

May be located outside of the corporate limits, and the police powers of the municipal corporation apply (ORC § 759.02)

City can sell any portion of the cemetery grounds not used for burial of the dead but funds received are limited to cemetery purposes (ORC §759.04)

City can sell land used for burial but transfer does not give purchaser possession until all interred bodies have been removed. (ORC §759.07)

Under ORC 759.05 A municipality may prohibit interment of the dead within the municipal corporation and in addition to fines and penalties, cause any body, interred contrary thereto, to be taken up and buried outside of the municipal corporation.

Headstones & Maintenance

Cemeteries must provide reasonable maintenance in accordance with suggested maintenance guidelines published by the Cemetery Dispute Resolution Commission, a Commission consisting of nine members appointed by the Governor. The Division and Commission determine whether a cemetery is reasonably maintained by considering its size and type, the extent and use of available financial resources, the contractual obligations for its care and maintenance, the standard of maintenance of similarly situated cemeteries, and the Commission's guidelines.

Maintenance guidelines are silent as to headstones

Under ORC 4767.09(B): In determining whether the owner or person responsible for the operation of a cemetery registered with the division provides reasonable maintenance of the cemetery property, the division may consider all of the following:

- (1) The size of the cemetery;
- (2) The type of cemetery;
- (3) The extent and use of available financial resources;
- (4) The contractual obligations for care and maintenance of the owner or person responsible for the operation of the registered cemetery;
- (5) The standard of maintenance of one or more similarly situated cemeteries. In determining whether a cemetery is similarly situated, the division shall consider the cemetery's size, type, location, topography, and financial resources.
- (6) The suggested maintenance guidelines the commission publishes under division (H) of section 4767.06 of the Revised Code;
- (7) Other sections of the Revised Code related to cemetery maintenance.

Maintenance guidelines and ORC are silent as to headstones

Section 759.09 (Municipal) Duties of director of public service provides:

The director shall direct all the improvements and embellishments of such grounds and lots, protect and preserve them.

Section 517.11 (Township) Care of cemetery provides:

The board of township trustees shall provide for the protection and preservation of cemeteries under its jurisdiction...It may re-erect any fallen tombstones, regardless of the cause of the falling, in such cemeteries

Indigent Burial

ORC 9.15 Burial or cremation of body at expense of township or municipal corporation

When the body of a dead person is found in a township or municipal corporation,

and such person was not an inmate of a correctional, benevolent, or charitable institution of this state,

and the body is not claimed by any person for private interment or cremation at the person's own expense,

or

delivered for the purpose of medical or surgical study or dissection in accordance with section 1713.34 of the Revised Code,

it shall be disposed of as follows:

(A) If the person was a legal resident of the county, the proper officers of the township or municipal corporation in which the person's body was found shall cause it to be buried or cremated at the expense of the township or municipal corporation in which the person had a legal residence at the time of death.

(B) If the person had a legal residence in any other county of the state at the time of death, home county is responsible.

(C) If the person was an inmate of a correctional institution of the county or a patient or resident of a benevolent institution of the county, the person had no legal residence in the state, or the person's legal residence is unknown, the superintendent shall cause the person to be buried or cremated at the expense of the county.

Claimed?

When the body of a dead person is found in a township or municipal corporation “and the body is not claimed by any person for private interment or cremation at the person's own expense...” the township or municipal corporation pays for the interment.

“A political subdivision is not relieved of its duty to bury or cremate a person at its expense when the body is claimed by an indigent person.”

Does this mean: If no one claims the body, burial at public expense. If someone claims the body, not at public expense (unless the claimant is indigent)?

Ohio Attorney General opinion 95-012 noted that in the first sentence, a body may be “claimed” by any person who wishes to arrange and pay for private interment. If so, no burial at public expense.

In the later sentence, a body may be “claimed” by an indigent person. In such circumstances, the body clearly is not claimed for private interment at the expense of the person claiming the body, since that person is unable to bear such expense. When an indigent person claims the body of a loved one in that manner, the political subdivision is not relieved of its duty to bury.

Whether a particular individual is claiming the body of a dead person “for private interment at his own expense” or is an person simply claiming the body of as that of a loved one is a question of fact.

Indigent Burial Fun Facts:

In 2023, funding to Board of Embalmers and Funeral Directors of indigent burial stopped.

If deceased had dual citizen (township and Village or City), then municipal corporation pays. Municipal corporation cannot pass ordinance through home rule powers to get out of ORC 9.15

Whether a particular individual is claiming the body of a dead person “for private interment at his own expense” or is an person simply claiming the body of as that of a loved one is a question of fact.

“Legal Residence” is not defined for purposes of 9.15 but has been found to mean a physical presence in a particular location coupled with the choice to make that place home, or the place with which a person is most intimately connected.

Political Subdivision must provide a metal, stone, or concrete marker on which the person's name and age, if known, and date of death shall be inscribed.

Political Subdivision is not relieved of its duty to bury or cremate a person at its expense when the body is claimed by an indigent person. (indigent person" means a person whose income does not exceed 150% of the federal poverty line),

Political subdivision may cooperate with an indigent person who claims the body of a loved one, but is not required to pay for a private funeral arranged independently by the person claiming the body.

Medical Colleges Or Embalming Board May Receive Bodies Or Study Or Dissection ORC 1713.34

Superintendents of city hospitals, directors or superintendents of city infirmaries, county homes, or other charitable institutions, directors or superintendents of workhouses, founded and supported in whole or in part at public expense, superintendents or managing officers of state benevolent institutions, **boards of township trustees**, sheriffs, or coroners, in possession of bodies not claimed or identified, or which must be buried at the expense of the state, county, or township, before burial, shall notify the professor of anatomy in a college which by its charter is empowered to teach anatomy, or the secretary of the board of embalmers and funeral directors of this state, of the fact that such bodies are being so held.

If after a period of thirty-six hours the body has not been accepted by friends or relatives for burial at their expense, such superintendent, director, or other officer, on the written application of such professor, or the secretary of the board of embalmers and funeral directors, shall deliver to such professor or secretary, for the purpose of medical or surgical study or dissection or for the study of embalming, the body of any such person who died in any of such institutions from any disease which is not infectious.

The expense of the delivery of the body shall be borne by the parties in whose keeping the body was placed.

This option is not available to municipalities.

Disinterment- ORC §517..23

Applies to both township and municipal cemeteries

A disinterment can be undertaken upon the following:

1. An Application (and payment for costs of disinterment) filed by:
 - (a) A designated representative to whom the decedent had assigned the right of disposition in a written declaration pursuant to ORC 2108.70 and who had exercised such right at the time of the declarant's death; or
 - (b) If no designated representative exercised the right of disposition pursuant to section ORC 2108.70 the surviving spouse of the decedent who is eighteen years of age or older.

2. On order of a probate court (and payment of cost)

BUT... no disinterment if the decedent died of a contagious or infectious disease (until a permit has been issued by the health department) (This does not apply to cremated remains), OR if an action is filed with probate court to stop disinterment

3. Township/City having control and management of a cemetery may disinter or grant permission to disinter and, if appropriate, may reinter or grant permission to reinter any remains interred in the cemetery to correct an interment error in the cemetery. (Must provide notice of the disinterment)

Stumble Upon A Corpse

If unanticipated human remains are encountered during any phase of compliance-related activities and/or construction activities, all ground disturbing activities within a 150-foot radius of the burial place must cease and the human remains, burial facility and associated funerary objects must be covered and secured. The discovery must be reported to the county medical examiner/coroner, local law enforcement, the agency/applicant, landowner, and the State Historic Preservation Office

North Market Cemetery:

Estimated anywhere between 142 to 523 graves could remain

Cost \$7.1 Million for removal of centuries old graveyard

Section 106 of the National Historic Preservation Act

O.R.C. 149.43 Archaeological and Historic Survey and Salvage Work

“When a municipal corporation holds land within its limits which has been used as a cemetery or burial ground, in which land internments have been prohibited by the municipal corporation, and it has been decided to remove the bodies interred therein, the legislative authority thereof may sell or otherwise dispose of such land, but the sale or transfer does not give the purchaser possession until the bodies therein have been removed, and all monuments and tombstones are removed and re-erected at the place of reinternment of the remains of each person.” (O.R.C. 759.07)

Archeological Finds

Under ORC 149.53 All political subdivisions of the state shall cooperate with the Ohio History Connection (OHC) and the Ohio historic site preservation advisory board in the preservation of archaeological and historic sites and in recovery of scientific information from such sites.

Whenever practical, political subdivisions should by contract or otherwise provide for archaeological and historic survey and salvage work during the planning phases, before work on a public improvement begins or at other appropriate times; and require that contractors to notify the State about archaeological discoveries.

The Director of OHC determines disposition of skeletal remains discovered on a site.

The Advisory Council of Historic Preservation has a Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects as well as an American Indian Policy concerning the treatment of human remains and associated burial objects.

Historic-era cemeteries are generally not an issue (could be interest to Law enforcement) unless involves a historical figure.

Can involved “preservation in place” with 100- foot buffer from construction activity.