

Municipal Code Chapter 4 Public Health and Nuisances

4.9

TOWN OF CLAYTON
CEMETERY AND BURIAL SITE ORDINANCE

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SECTION 1 -- PURPOSE

The purpose of this ordinance is to enhance the beauty, regulate the construction, manage the operation and platting of cemeteries and the burial of human corpses and other cemetery uses and activities in the Town of Clayton.

SECTION 2 – AUTHORITY

The Town Board of the Town of Clayton has Town Powers and the specific authority under 157.50(2) Wis. Stats to adopt this Ordinance. These ordinances apply from this date forward.

SECTION 3 – ADOPTION OF ORDINANCE

The Town Board of the Town of Clayton, by this Ordinance, duly adopted with a quorum and roll call vote by a majority of the Town Board present and voting, provides the authority for the Town of Clayton and the Town Board of the Town of Clayton to regulate the construction, management, operation and platting of cemeteries and the burial of human corpses and other cemetery uses and activities in the Town of Clayton. References to statutes are to the Wisconsin Statutes in effect on adoption of the Ordinance and any successor statutes enacted thereafter.

SECTION 4 – POLICY STATEMENT

Any Town of Clayton Municipal Cemetery is owned and maintained by the Town of Clayton for the benefit of all citizens. Persons of all denominations and of all religions, of all creeds and races, shall be allowed to be buried in any Town of Clayton Municipal Cemetery. This shall specifically include Veteran burials. This Ordinance for construction, management, platting and operation of any Town of Clayton Municipal Cemetery is adopted pursuant to 157.50(2) Wis. Stats. In addition, certain provisions are set forth in

this Ordinance to govern construction, management, administration, platting and operation of any new cemetery or expanded cemetery of any other type dedicated and owned by other persons in the Town of Clayton, and of any burial site in the Town of Clayton. The Town Board may adopt in writing additional Regulations and By-laws under 157.11(2) Wis. Stats for operation, management and administration of any Town of Clayton Municipal Cemetery. The Town of Clayton reserves the right to amend any of this Ordinance to conform to newly developed cemetery practices. The Town Board, by Resolution, may designate, retain or employ a person as Sexton or any other designee or Committee to act administratively and to manage, operate and care for any Town of Clayton Municipal Cemetery pursuant to this Ordinance. The Town Board may adopt By-laws and Regulations without a public hearing. The Town Board, the Sexton or other designee of the Town Board, herein after referred to as the "Authority" are responsible for the enforcement of this ordinance and any regulations promulgated under this ordinance. Hereinafter, references of the "Town" are specific to the Town of Clayton and references to "Town Cemetery" are specific to any Town of Clayton Municipal Cemetery.

SECTION 5 – PLATTING OF NEW CEMETERY LOTS / NEW OR EXPANDED CEMETERY OPERATIONS

A. PLATTING/ZONING

Before any new block of any existing Town Cemetery or other new or expanded Cemetery in the Town is opened for the sale of cemetery lots or for burial of human remains, the Authority for a Town Cemetery or any person or agent for any other cemetery, shall cause the blocks and lots to be platted and recorded in the Office of the Register of Deeds for Winnebago County. For all other new or expanded cemeteries to be platted, dedicated or constructed for cemetery use after the effective date of this Ordinance in the Town, the person, corporation, order, society or association noted in 157.065 Wis. Stats to construct, manage or operate such cemetery shall plat and record such plat as noted herein and under 157.07 Wis. Stats. No new burial site nor new burial of human remains in the Town, after the effective date of the Ordinance, shall occur outside a dedicated, platted and constructed cemetery in full compliance with this Ordinance and Chapter 157 Wis. Stats. Any new or expanded cemetery or any burial site shall comply with any land division or zoning ordinance applicable in the Town.

B. PURCHASE OF NEW LANDS

The Authority shall not purchase, acquire or condemn any land for cemetery purposes without Town or Special Meeting approval of the Town electors under Chapter 157.065 Wis. Stats.

C. PUBLIC EASEMENT IN CEMETERY

No person in violation of 157.60 Wis. Stats. shall open or make any highway, Town road, private way or other public easement in or upon any cemetery burial site or location for burial of the dead in the Town, unless written consent has been obtained by the proper State, County or Town authority.

D. NEW OR EXPANDED CEMETERIES

No person or authorized agents of any cemetery shall 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 approval of the Town Board. A

cemetery for purposes of this Ordinance shall be any location for burial, as defined in 157.061(1) Wis. Stats of human remains, as defined in 157.061(8) Wis. Stats, in the Town that has been dedicated as a cemetery as dedicated is defined in 157.061(4) Wis. Stats, or as defined under common law. Proof of acceptance by the Town Board shall be necessary for a determination of a cemetery by the Town Board under this Ordinance. Any new or expanded cemetery to be approved by the Town Board shall be, at minimum, properly platted, as determined by the Town Board, and then recorded with the Town Clerk and the Winnebago County Register of Deeds.

E. TEN ACRES MINIMUM

No cemetery shall be established or dedicated in the Town, unless the minimum acreage shall be at least ten (10) contiguous acres. No mausoleum shall be established or used with less than minimum acreage required under 157.12(2) (c) Wis. Stats. Unless approved by the Town Board.

SECTION 6 – PURCHASE OF LOTS

A. PRICE OF LOTS

The Town Board shall from time to time fix a price on all lots to be sold in any Town Cemetery. All outstanding charges due to the Town must be paid prior to or concurrent with interment or burial. Exceptions may be made by written approval of the Town Board by contacting the Town Clerk. The Town Board reserves the right to adjust the purchase price per lot as well as other fees and charges without notice by written Resolution at anytime. The schedule of effective rates are available at the office of the Town Clerk.

B. SALE OF LOTS

Persons or their authorized agents desiring to purchase a lot in any Town Cemetery are referred to the Authority. The Authority will have available suitable plats showing size and price of lots, and such other information as may be required, and will render assistance to those desiring to make lot purchases. Upon having made a lot selection, the Authority will issue a lot order to the prospective purchaser, or his agent, who will present the order at the Office of the Town Clerk. Upon receipt of proper payment payable to the Town Treasurer, the Town Chair and the Town Clerk shall issue a deed to the lot in the form prescribed by the Town Attorney. The Deed from the Town and the records of the cemetery that are kept by the Town Clerk or other designee of the Town are the only evidence of Title to any lot. The deed shall be signed by the Town Clerk and Town Chair or other persons so designated by the Town Board, sealed and acknowledged so as to entitle to be recorded. The purchaser may record this deed with the Winnebago County Register of Deeds.

C. COMPLIANCE WITH 157.08 WIS STATS

Persons conveying cemetery lots at any cemetery in the Town shall comply with 157.08 Wis. Stats.

D. NOTICE OF BURIAL SITES IN THE TOWN

Any person who located a burial site, as defined in 157.70(1) (b) Wis. Stats, or suspected such burial site, or receives oral or written notice of such burial site or suspected burial site in the Town, outside a dedicated cemetery, shall immediately contact the Town

Clerk. The Town Clerk shall, in writing, notice the Town Board of such burial site or suspected burial site.

SECTION 7 – OWNERSHIP RIGHTS OF BURIAL OR INTERMENT

A. OWNERSHIP CONDITIONS

1. The lot owner or their 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 By-laws and Regulations. For purposes of this Ordinance “burial” shall mean entombment, inurnment or interment.
2. Upon full payment of any person of the purchase price of a lot, the Town Clerk and Town Chair for any Town Cemetery will issue a cemetery deed, under seal, and the deed will be recorded in the records of the Town as evidence of ownership of the lot. Lots, or fractions of lots, for which lot deeds have been issued by the Town, will not thereafter be divided except by consent in writing of the Town.
3. All repossessed vacant grave spaces in any Town Cemetery shall be subject to the same fees and charges then established by the Town Board.
4. Any lot owner at any Town Cemetery shall have acquired the lot for burial or interment of themselves and members of their family. However, the lot owner may grant written permission (which must be notarized and placed on file with the Town Clerk) for the burial or interment of other persons. No corpse shall be interred in a lot except the corpse of one having an interest therein except by the written consent of all persons having an interest in the lot.

B. INTERMENT/BURIAL

Unless otherwise directed in writing and filed with the Town Clerk, the lot owner, the devisees, or the heirs, the Authority will permit the interment or burial of members of the family at any Town Cemetery at the request of any interested person upon proof of eligibility for burial or interment as follows:

- a. The surviving spouse of the lot owner shall have the first right to interment or burial or to direct the right of interment or burial.
- b. When there is no surviving spouse, the devisees, or heirs of the owners may, by agreement in writing, determine who among them shall have the right of interment or burial or direction for interment or burial, which agreement shall be filed with the Town Clerk.
- c. In the event the owner, their surviving spouse, the other devisees, or heirs shall not or cannot arrange for future burials or interments, then the devisees or heirs, as the case may be, of such owner, shall have the right to interment in order as follows:
 - 1) Spouse 2) Children 3) Surviving family members.
- d. If no such arrangement is applicable, then the Authority may determine use.

C. OWNERSHIP RIGHTS

All interments or burial rights in the cemetery lots located at any Town Cemetery shall occupy the same position as real estate at the death of the owner. Only such persons whose names appear on the cemetery records of the Town will be recognized as owners or part owners of lots. Lot owners shall not allow burials or interments to be made in their lots for any remuneration or financial consideration. In case of 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 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.

D. RESALE

Lot owners may not resell or transfer their lots or parts of lots in any Town Cemetery except as outlined below:

1. The Town Clerk shall enter in the record kept for that purpose all deeds of transfer and reconveyance of cemetery lots. No such reconveyance shall be received and recorded by the Town Clerk until a fee, as established by the Town Board has been paid therefore.
2. Said fee shall go into the general Town Cemetery Fund.
3. Reconveyance of lots or parts of lots may be made only by written application therefore upon blanks furnished by the Town Clerk, the same to be approved by the Town Board. Such application shall be executed by the owner(s) of the lots, or if the owner(s) is deceased, by the legal heirs. The application shall state the lot and block number.

E. DISINTERMENT

Any disinterment of any person buried in the Town Cemetery shall comply with 157.112 Wis. Stats. A Disinterment Permit shall be required prior to any disinterment or re-interment 69.18 (4) Wis. Stats.

F. USE OF REPOSSESSED LOTS

Whenever possible, repossessed lots, under Chapter 157.115(2) Wis. Stats, will be used for burials or interment before new areas of the cemetery are used or platted.

SECTION 8 – CARE OF LOTS

A. INCOME

The Town Board shall annually fix, as required under 157.10(5) Wis. Stats, a sum necessary for the proper and decent care of cemetery lots and improvement of any Town Cemetery, including obtaining from different sources, including funds from the County of Winnebago for Veteran's graves under Chapter 45 Wis. Stats, sufficient income for such care, improvements and operations. This sum shall not include special assessments, perpetual care funds, special charges and any security or other income received to insure proper and timely placement of markers and monuments.

B. GENERAL IMPROVEMENTS

The Town Board will direct and administer all improvements and maintenance within the cemetery before and after any interments or burials. All graves will be sodded/seeded and mowed when determined necessary by the Authority. The Authority shall determine the grade of the lots. Re-sodding or re-seeding of old interments or disinterments will be done when determined necessary by the Authority.

C. CARE FOR VETERAN'S GRAVES

All cemeteries and other burial sites in the Town shall provide proper and decent care for the graves and tombstones for Veterans under 45.185 Wis. Stats, and the Town

Board shall at all times see that such care is provided and that such funding is timely obtained from the County of Winnebago annually to aid in such care.

SECTION 9 – PRIVILEGES AND RESTRICTIONS

A. BY-LAWS AND REGULATIONS

The Town Board may adopt By-Laws and Regulations for proper management and care of any Town Cemetery and may enforce such regulations under 157.11(2) Wis. Stats. Persons shall comply with 157.11(2) Wis. Stats. in the planting of trees and shrubs, erecting of fences or other structures and maintaining such in any Town Cemetery.

B. NO MOUNDS

No mound shall be raised upon any grave above the grade established by the Authority in any Town Cemetery.

C. LIMITATIONS ON STRUCTURES AND URNS

No hedges, fences, railings, embankments, depressions or other enclosures of any kind will be permitted on or around lots in any Town Cemetery. Wooden boxes, wire containers, glass objects, bottles, cans and other such objects may not be placed on lots without written approval of the Authority and, if so placed, will be removed by the Authority without notice. Glass objects are prohibited from use in the cemetery.

Plants and flowers, real or artificial must be in pots/urns. The Authority shall remove floral urns as they become unsightly or deteriorated and shall not be replaced. Lot owners may be asked to remove any items that interfere with mowing.

Only a foundation and/or monument may be placed on a lot prior to internment or burial.

D. LANDSCAPING CONTRACT

Landscaping, mowing and general care of lots and other work in the Town Cemetery will be done by the Town, it's officers, it's employees, independent contractors or agents, including any Sexton or other designee of the Town Board.

E. ACCESS TO LOTS/OPENING AND CLOSING OF BURIAL PLACE

The Town reserves the right for its officers, employees, contractors and agents, including the Sexton and other designee 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 such duties. The Town Board has the sole right to the opening and closing of burial or interment places used or to be used for burial of human remains in the Town Cemetery, unless ordered by a court of competent jurisdiction to open or close such places.

F. NO LIABILITY FOR DAMAGES

The Town of Clayton and it's officers, employees, contractors and agents including the Sexton or other designee of the Town Board assume no liability for damages to property or of person or for physical or mental suffering arising out of the performance of its normal operations related to the construction, management, operation and platting of the Town Cemetery, including proper and decent care of the cemetery, the lot, and the

graves, or for loss by vandalism or other acts beyond its reasonable control at such cemetery. Any person who has witnessed mishandling of any corpse, improper burial or disturbance of any cemetery lot in the Town, including in any Town Cemetery, shall timely report such mishandling of the corpse, improper burial or disturbance of such lot or burial site to the Authority.

G. ALTERING PHYSICAL CONDITIONS

The Town reserves the right to alter, change or close alleys, roadways, water mains and other physical public properties at any Town Cemetery.

H. ENFORCEMENT OF REGULATIONS AND ORDINANCE

The Town Board may appoint, with citation issuance and service powers, an Employee or agent of the Town, including the Sexton, to administer and enforce its By-laws and Regulations and this Ordinance under 157.11(2) Wis. Stats.

SECTION 10 – INTERMENTS

A. DAYLIGHT INTERMENTS

Burials, interments or disinterment at any Town Cemetery will be during daylight hours only.

B. OUTER CONTAINERS

All burials, interments and disinterments at any Town Cemetery shall be made in a permanent outer container excluding the use of wood.

C. GRAVE DIGGING

All graves at any Town Cemetery or burial site in the Town to be used for burials or interment shall be opened and dug at no cost or expense to the Town but shall be under the direction of the Authority. Depth of graves shall conform to the Wisconsin State Board of Health specifications. The Authority may charge the full cost at any Town Cemetery for any grave digging and opening service provided by the Town, including the Sexton fees for staking the plot, if the Town Board has authorized the Town, its officers, employees, contractors or agents including the Sexton, to provide such grave staking, grave openings or digging service. The Authority may also establish charges for snowplowing and seasonal access costs to the lot owner as incurred by the Town for interment, disinterment or other burial services. Arrangements for any interment, disinterment or other burial services should be made at least forty-eight (48) hours in advance of the funeral service by contact to the Town Clerk, the Sexton or other person designated by the Town Board. Holiday burials are contingent upon the availability of the cemetery personnel.

D. BURIAL PERMIT

No burial or interment in the Town Cemetery will be permitted until a legal burial permit has been presented to the Town Clerk, the Sexton or other designee of the Town Board. The interment or burial of bodies of persons who have died of contagious disease shall be in strict accordance with the rules of the State Board of Health.

E. RESPONSIBILITY FOR MAINTAINENCE OF FLOWERS, WREATHS, ETC

There will be no responsibility on the part of the Town, its officers, employees, contractors or agents including the Sexton, for the protection and maintenance of

flowers, wreaths, emblems, urns, family or personal items, memorials, etc. used or placed at any Town Cemetery in conjunction with funerals, burials, interments, disinterment or memorials.

F. NUMBER OF GRAVES PER LOT

The interment or burial of one body per grave shall be the requirement at any Town Cemetery except in the following circumstances:

1. Two (2) remains from cremation shall be allowed in one (1) grave with one (1) headstone or two (2) flat markers to be placed only in line with other stones.
2. One (1) full-body and one (1) cremation shall be allowed in one (1) grave, with one (1) headstone or two (2) flat markers to be placed only in line with other stones.
3. All cremations shall be placed in permanent outer container excluding the use of wood.

A. SEASONAL INTERMENT/DUTY TO BURY

The Authority shall provide for cemetery services, burials and interments at any Town Cemetery during each season, including winter, whenever practical in compliance with 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 in compliance with this Ordinance, State Law, and any Regulation of Rules established by the Town Board. The Town reserves the right to charge special and reasonable fees to recover costs for any burial cost incurred during difficult weather conditions.

SECTION – 11 – MONUMENTS AND MARKERS

A. SET GRAVE MARKERS/PROTECT DRIVEWAYS.

Only the monument company persons or other persons authorized by the lot owners, but not the Authority will set grave markers, monuments and foundations at any Town Cemetery. Except as herein otherwise provided, under no conditions will the Authority construct monument or marker bases or erect monument or markers on bases. The Authority reserves the right to require the construction of a foundation of such size, material and design as will provide ample insurance against settlement or injury to the stone work. The top of the concrete foundation will be constructed flush with the ground. Whenever possible, all markers will be set with a five (5) inch margin. A permit for placement of foundation, markers and monuments shall be available from the Office of the Town Clerk, the Sexton or other designee of the Town Board. The setting of monuments, stones and markers and the transportation of all tools, materials etc., within the Town Cemetery grounds shall be subject to the supervision and control of the Authority. Unless special arrangements are made with the Authority such work to be conducted between the hours of 8:00 a.m. and 4:00 p.m. Mondays through Fridays except on national holidays.

Heavy trucking will not be permitted within any Town Cemetery when, in the opinion of the Authority, such work might cause damage to the driveways. Except when special permission is obtained, all work as outlines above shall be completed and debris removed immediately.

B. LIMITATIONS

The Town reserves the right for the Authority to refuse permission to erect any monument, marker or foundation work not in keeping with the good appearance of the grounds at a Town Cemetery. The size of the monument and/or stonework must be provided to the Authority and approved before said work will be permitted on a lot. Only one (1) monument or marker will be allowed per lot. No foundation marker or monument shall be larger than the width of the lot or group of lots purchased. All monuments must be set in line with other monuments so far as possible as directed by the Authority. Government service monuments or markers will be surface grounded or attached to the monument or marker. All markers and monuments must have a cement foundation. No monument or marker will be more than five (5) feet in height unless approved in writing by the Town Board. All markers shall be parallel with existing markers. Temporary markers must be removed or replaced with a permanent marker at any Town Cemetery within one (1) year of burial or interment. A pre-need marker may be placed on a lot or group of lots before interment or burial. No materials other than granite or standard bronze shall be used for outside and above ground portion of any marker or monument. Within one (1) year of burial, a marker or monument identifying the burial or interment must be placed at the gravesite.

C. REMOVAL OF MONUMENTS

Marker or monumental work, once placed at a Town Cemetery on its foundation, shall not be removed, except by written permission of the Authority.

D. PAYMENT

Any lot at a Town Cemetery must be paid for in full to the Town Clerk before markers, monuments or foundation are set and before any Cemetery Deed conveyance.

SECTION 12 – VAULTS AND MAUSOLEUMS

A. CONSTRUCTION OF ABOVE GROUND VAULTS AND MAUSOLEUMS

Construction of above ground vaults and mausoleums in any Town Cemetery is prohibited unless approved in writing by the Town Board.

SECTION 13 – TREES, SHRUBS AND FLOWERS

A. TREE/SHRUB PLANTING AND REMOVAL

The planting or removal at any Town Cemetery of any trees and shrubs on Town Cemetery property will not be permitted except by written consent of the Authority.

B. FRESH/ARTIFICIAL FLOWERS/POTTED PLANTS/SHEPHERDS HOOK.

Fresh cut flowers, artificial flowers, potted plants or shepherds hooks may be used in any Town Cemetery anytime. Plants and flowers, real or artificial must be in pots/urns.

C. SPECIAL OCCASIONS

Potted plants or fresh flowers at any Town Cemetery may be set on lots, without disturbing the sod, on special occasions such as Memorial Day, birthday, anniversary, etc., but if not removed within five (5) days, may be picked up and destroyed by the Authority

if unsightly. During the non-mowing season and on fresh gravesites, wire-in-ground floral stands and sprays are allowed.

D. LIMITS ON EXISTING FLOWERBEDS

The Authority will remove existing private plot flowerbeds that are not maintained and become unsightly or undesirable.

E. PLANT OR FLOWER REMOVAL

Plants or flowers planted may not be taken up or removed from the Town Cemetery or cuttings removed from plants from the Town Cemetery without written consent from the Authority. All real or artificial flowers, wreaths, crosses, or other decorations shall be removed off the plots during clean up the first week of April and October or they will be disposed of.

F. VINE/WREATH/MEMORIALS REMOVAL.

The Authority when found objectionable will remove vines that interfere with the proper care of lots or graves and injure the grass from any Town Cemetery. During the non-mowing season and on fresh gravesites, wire-in-ground floral stands and sprays are allowed.

G. PLACEMENT OF ITEMS

Any items placed on the plot shall be in line with the rows of monuments on the foundation except by prior written consent of the Authority.

SECTION 14 – MISCELLANEOUS

A. NEGLECTED LOTS

It is urged that lot owners interest themselves in the present and future care of their lots, as a single neglected lot mars the beauty of the entire Town Cemetery. The Authority may notice or attempt to notice in writing a lot owner that the lot and any monuments or markers are being neglected and that failure to comply with Regulations regarding proper care and management or to correct such neglect may be cause for forfeiture under 157.11(2) Wis. Stats.

B. PUBLIC NUISANCE

Uses that may create a public nuisance or may be likely to cause desecration of any cemetery, cause disturbance, interference or damage to the burial ground, the burial lots or any monuments are prohibited.

C. SPRING/FALL CLEAN UP.

All real or artificial flowers, wreaths, crosses, or other decorations shall be removed off the plots during clean up the first week of April and October or they will be disposed of per the Town Board, the Sexton or other designee of the Town Board of the Town of Clayton.

D. SEXTON

The Town Board may appoint a Town employee or retain an independent contractor as a Sexton to administer, repair, maintain, manage and operate or any part of the operations or of the cemetery thereof, of any Town Cemetery. The Town Board,

consistent with this Ordinance, may designate powers and duties to the Sexton by written Resolution.

E. RECORDS

The Town Clerk shall be responsible for and shall be the custodian of the records of the Town cemetery, including all public records. The Town Clerk, Sexton and other Town officials shall make available in a timely manner all such records in their custody requested by the Department of Regulations and Licensing in its audit function.

F. EXCEPTIONS

All exceptions and approvals shall be documented in writing by the Authority permanently filed in the cemetery documentation by the Town Clerk.

SECTION 15 – PENALTIES

A. PENALTIES

Any person who violates any provision of the By-laws or Regulations may be required to forfeit an amount not to exceed ten dollars (\$10.00). Any person who violates any provision of this Ordinance, may be required to forfeit an amount not to exceed two hundred dollars (\$200) for each offense, together with the costs of prosecution. Each day that a violation continues shall be considered a separate offense. The Town Board, where appropriate, may seek Injunctive Relief action to prevent violations of the Ordinance and Chapter 157 Wis. Stats. Furthermore, the Town Board shall be permitted to withhold from any person who is in violation of the Ordinance or Chapter 157 Wis. Stats., the issuance of any Town of Clayton 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 16 – EFFECTIVE DATE

Adopted this _____ day of _____ 20 ____.

Town Chair

Town Clerk