

TOWN OF LAFAYETTE

TOWN CEMETERY

ORDINANCE 10 – 09

The Town Board of the Town of LaFayette, Walworth County, Wisconsin, does hereby ordain as follows:
This chapter shall be known as the "Town of LaFayette Town Cemetery Ordinance."

SECTION I - TITLE AND PURPOSE

The title of this Ordinance is the "Town of LaFayette Town 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 LaFayette 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 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.
- 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 or of any town cemetery pursuant to this ordinance.

- G. "Town" means the Town of LaFayette, Walworth County, Wisconsin.
- H. "Town board" means the board of supervisors for the Town of LaFayette, Walworth 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 LaFayette, under s. 157.50, Wis. stats., that is located within the town.
- J. "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 - 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 Walworth 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.**
1. 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 Walworth 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 3 contiguous acres at platting dedication. No cemetery shall be located, established, or dedicated in violation of a town, county, or other zoning ordinance.

2. After the date of adoption of this ordinance, any place in the town where human remains are buried on private or public land without written permit approval of the town board and not timely removed within 180 [state time limit] days after receipt of written notice from the town board to remove said remains is declared to be a public nuisance. In addition to commencing an action for penalties as provided in this ordinance, the town may take action to abate the nuisance and recover its costs of doing so, as provided in the town Public Nuisance Ordinance. This paragraph does not apply to any established cemetery or burial site grounds approved, owned, and operated in accordance with chapter 157, Wis. stats., and this ordinance.

SECTION VII - 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.

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 issue a cemetery lot deed to the lot in the form prescribed by the town attorney. 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. The deed shall be signed by the town clerk and town chair or other persons so designated by the town board and sealed and acknowledged.

2. Persons conveying any cemetery lot in any town cemetery shall comply with s. [157.08](#), Wis. stats., and this ordinance.

SECTION VIII - 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. Upon full payment by any person of the purchase price of a town cemetery lot, the town clerk and town chair shall issue a cemetery lot deed, under seal, as provided in Section VIII, subsection B., and a copy of the deed shall be filed in the records of the town as evidence of ownership of the lot. Lots for which lot deeds have been issued by the town may not be subdivided except by consent in writing of the town board.

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 as follows:

1. Reconveyance of lots or parts of lots may be made only upon written application filed with and approved by the town clerk. The application shall be executed by the owner of the lots, or, if the owner is deceased, by the legal heirs. The application shall state the lot and block number. Upon approval by the town clerk, the owner of the lot shall execute a deed in the same form as an original deed from the town.

2. The town clerk shall enter in the record kept for that purpose copies of all deeds of transfer and reconveyance of cemetery lots.

E. Reburial.

1. In this subsection, "reburial" means to disintomb, disinter, or disinter human remains that are buried in a cemetery and reentomb, reinurn, or reinter 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 disinterment and reinterment shall be required prior to any reburial under s. [69.18 \(4\)](#), Wis. stats.

SECTION IX - CARE OF LOTS AT THE TOWN CEMETERY

A. **Costs of care fixed.** The town board shall annually fix, as required under s. [157.11 \(5\)](#), Wis. stats., a sum necessary for the proper and decent care of graves and unoccupied cemetery lots and improvement of any town cemetery. This will be done through a budget item in the town's annual budget.

B. **General improvements.** The town board shall direct and administer all improvements and maintenance within the cemetery before and after any burials. 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 or the sexton. The grade of the cemetery lots shall be determined by the town board or the sexton. The corners of all cemetery lots shall, when purchased, if possible, be permanently marked by the town board or the sexton. Resodding of existing graves or following disinterment will be done when determined necessary by the town board or the sexton.

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.

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.

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.** No structures, hedges, fences, railings, embankments, depressions, or other enclosures of any kind are permitted on or around lots in any town cemetery.

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, including any sexton, unless otherwise provided in writing by the town board.

F. **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 the town cemetery, unless so ordered by a court of record to open or close such places.

G. 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.

H. 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.

I. Enforcement of regulations and ordinance. The town board may appoint, with citation issuance and service powers, any employee or agent of the town, including the sexton, to administer and enforce its town cemetery bylaws and regulations and this ordinance.

SECTION XI - RULES FOR VISITORS TO TOWN CEMETERIES

A. Visiting hours. The cemetery will be open 24 hours a day, 365 days a year.

B. Firearms. Firearms are prohibited in any town cemetery except in conjunction with military funerals or specific memorial events permitted by the town board, the sexton, or other designees of the town board. At all other times, firearms, bows and arrows, slingshots, and other like articles are prohibited.

C. Visitors.

1. Visitors to town cemeteries are required to use existing walkways and roadways whenever possible.

2. Except as provided in Section XVI, 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 or the sexton who is engaged in official cemetery management and care duties for the town, 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 sexton.
- e. Remove or damage any town cemetery property not included within subdivisions a. to d.
- f. No person may loiter, cause a public nuisance, or engage in any sport or recreational activity on any town cemetery property without the written consent of the town board or the sexton.

D. 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 vehicle, within the cemetery that is not legal to operate on public highways.
3. No person, without the written consent of the town board, or the sexton, may park or abandon any motor vehicle in any town cemetery on any grassy or seeded area 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 or the sexton, 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 or the sexton.

E. Protection of cemetery property. No person without written consent of the town board or the sexton 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.

F. 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 sexton.

G. 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 board or the sexton.

H. 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 or the sexton. 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 or sexton unless approved by the town board or the sexton.

I. **Working in cemetery.** All contractors or other persons having work in the town cemetery shall notify the town clerk or the sexton 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 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 containers.** All burials and reinterments, at any town cemetery, shall be made in a permanent outer burial container 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. Depth of graves shall conform to State of Wisconsin rules specifications. The town does not provide grave staking, grave openings, or digging services. Arrangements for any disinterment or burial services shall be contracted with a burial or interment service. The town board or the sexton may also establish charges for snowplowing and seasonal additional access costs to the lot owner incurred by the town to provide for burial or disinterment services. The time for any disinterment or burial service shall be arranged so that the grave shall be properly filled and all surplus earth removed before 4:30 p.m. on the day of the disinterment or burial service, unless that requirement is specifically waived in writing by the town clerk or the sexton.

D. **Burial notice.** No burial in the town cemetery shall be permitted until a written notice has been provided to 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 disinterments, or memorial events.

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. Six remains from cremation shall be allowed in one lot with one headstone.
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.

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.

SECTION XIII - 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 therefor from the office of the town clerk or the sexton. 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 board or the sexton. Except as otherwise provided in this ordinance, under no conditions will the town board or the sexton 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 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.
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 sexton. Unless special arrangements are made in writing with the town board or the sexton, such work shall be conducted between the hours of 7:00 a.m. and 5:00 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 sexton, the truck operation may cause damage to the driveways or other town cemetery property. Except with written permission of the town board or sexton, 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 sexton 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 sexton 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 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. 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 sexton.

D. **Payment.** Any lot at a town cemetery must be paid in full to the town treasurer before markers, monuments, and foundation are set and before any cemetery deed conveyance. All outstanding charges due the town must be paid prior to burial.

SECTION XIV - 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 XV - 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 sexton.

B. **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.

C. **Potted plants.** Potted plants at any town cemetery may be set on lots, without disturbing the sod.

D. **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 sexton.


SECTION XVI - MISCELLANEOUS

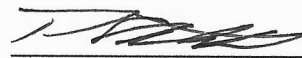
A. **Sexton.** The town board, by resolution, may designate, retain, or employ a person as sexton or may designate any other person or committee to act administratively and to manage, operate, maintain, and provide care for the town cemetery or any part of the operations or of any town cemetery pursuant 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 with newly developed cemetery practices or any other legal purpose that the town board deems necessary and appropriate.

SECTION XVII - EFFECTIVE DATE

This Ordinance adopted by the Town Board of the Town of LaFayette on October 18, 2023


Cairie L. Virrueta, Town Clerk-Treasurer


Derek Steffen, Chair