

COPY

**TOWN OF AVON  
ORDINANCE NO. 2019- 02**

**AN ORDINANCE REGULATING CEMETERIES**

**RECITALS**

- A. The Town of Avon (the "Town") owns certain cemeteries within the Town.
- B. The Town Board of the Town of Avon desires to regulate cemeteries as set forth herein.

NOW, THEREFORE, the Town Board of the Town of Avon, Rock County, Wisconsin, ordains as follows:

**SECTION I - TITLE AND PURPOSE**

The title of this Ordinance is the "Town of Avon 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 Avon has the specific authority under § 157.50(2), Wis. Stats., and general authority under its village powers under § 60.22, Wis. Stats., to adopt this ordinance.

**SECTION III - 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 V, 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 Avon Rock County, Wisconsin.
- H. "Town Board" means the board of supervisors for the Town of Avon, Rock 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 Avon, Rock County, Wisconsin, under § 157.50, Wis. Stats., that is located within the Town.
- J. "Town chair" means the chairperson of the Town of Avon, Rock County, Wisconsin.
- K. "Town clerk" means the clerk of the Town of Avon, Rock County, Wisconsin.
- L. "Town treasurer" means the treasurer of the Town of Avon, Rock County, Wisconsin.
- M. "Wis. Stats." means the Wisconsin Statutes, including successor provisions to cited statutes.

#### SECTION IV - STATEMENT OF POLICY

Every Town cemetery is owned, operated, directly controlled, and maintained by the Town for the benefit of citizens of all denominations, religions, sexes, creeds, and races, all of whom shall be allowed to be buried in a Town cemetery. This ordinance, adopted pursuant to § 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 V - NEW BURIALS, CEMETERIES, AND CEMETERY LOTS

- 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 § 157.065, Wis. Stats., shall cause the blocks and lots to be platted and recorded in the Office of the Register of Deeds for Rock County, Wisconsin, in accordance with § 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.

#### SECTION VI - PURCHASE OF LOTS IN TOWN CEMETERY

- A. Price of lots and other fees. The Town Board may from time to time by resolution, fix a price on all lots to be sold for burials in any Town cemetery. The Town Board may also from time to time by resolution, fix fees for headstone placement, opening and closing lots, burials, or any other fee it deems reasonable in its discretion.
- 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, to the extent possible, 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. 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 so as to entitle the purchaser to record the deed with the Register of Deeds for Rock County, Wisconsin.
  - 2. Persons conveying any cemetery lot in any Town cemetery shall comply with § 157.08, Wis. Stats., and this ordinance.

## SECTION VII - 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 a portion of a lot for burial purposes only in accordance with the terms of this ordinance or any cemetery association 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 herein, 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.
3. All repossessed vacant lots in any Town cemetery when resold are subject to the same fees and charges as other unoccupied lots.

### B. Burial.

1. In this subsection, "relative" means a parent, grandparent, child, grandchild, brother, sister, parent-in-law, grandparent-in-law, brother-in-law or sister-in-law, uncle or aunt, and nephew or niece.
2. Any lot owner at any Town cemetery acquires the lot solely for the purpose of burial of the owner at the time of the owner's death, and if the lot is owned jointly by spouses, either spouse is entitled to burial at that lot. The lot owner may grant written permission, which must be notarized and filed with the Town clerk, for the burial of specific persons other than the owner and the owner's spouse. If more than one person has an ownership interest in the lot, the written consent of all persons having an ownership interest in the lot is required to permit the burial of a person other than an owner or owner's spouse.

- 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 a relative. 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, so as to entitle the purchaser to record the deed with the Register of Deeds for Rock County, Wisconsin.
2. The Town clerk shall enter in the record kept for that purpose, copies of all deeds of transfer and reconveyance of cemetery lots. No reconveyance deed may be received and filed by the Town clerk until a fee of \$100 has been paid therefor, which fee shall be deposited into the general Town municipal fund.

E. Reburial.

1. In this subsection, "reburial" means to disintomb, disinter, or disinter human remains that are buried in a cemetery and reinter, 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 § 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 § 69.18 (4), Wis. Stats.

F. Use of repossessed lots. Whenever possible, lots repossessed under Chapter 157, Wis. Stats., in any Town cemetery will be resold and used for burials before new areas of the cemetery are used or platted.

## SECTION VIII - PRIVILEGES AND RESTRICTIONS IN TOWN CEMETERIES

- A. Mounds prohibited. No person may raise the level of the earth over any grave in a Town cemetery above the general level of the cemetery lot.
- B. Limitations on structures and urns. No structures, hedges, fences, railings, embankments, depressions, or other enclosures of any kind are permitted on or around lots in any Town cemetery.

- C. Landscaping. All landscaping, mowing, and general care of lots, and other work, construction or maintenance in the Town cemetery shall be performed by the Town by its officers, employees, independent contractors, or agents, including any sexton, unless otherwise provided in writing by the Town Board.
- D. Access to lots; opening and closing of burial places. The Town reserves the right for its officers, employees, contractors, and agents, including the sexton and the Town Board supervisors, 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.
- E. No assumption of liability for damages. The Town's officers, employees, contractors, and agents, including the sexton and the Town Board supervisors, 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.
- F. Altering physical conditions. The Town Board reserves the right to alter, change, or close alleys, roadways, walkways, water mains, and other physical improvements at any Town cemetery.
- G. Enforcement of regulations and ordinance. The Town Board may appoint, with citation issuance and service powers if applicable, any employee or agent of the Town, including the sexton, to administer and enforce this ordinance.

## SECTION IX - TOWN CEMETERY BURIALS

- A. Daylight burials. Except upon written approval of the Town Board or the sexton, burials at any Town cemetery shall be made only during daylight hours.
- B. Grave digging. All graves at a Town cemetery and any other cemetery in the Town to be used for burials shall be opened and dug at no cost or expense to the Town, but shall be under the direction of the Town Board or the sexton. The minimum depth of graves shall be established by the Town Board from time to time and all graves shall be dug in strict conformity with the Town Board policy then in effect.
- C. 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 ("Decorations") used or



placed at any Town cemetery in conjunction with funerals or burials, including disinterments, or memorial events. All Decorations must be removed annually no later than April 15, and may be replaced no earlier than the second Sunday in May.

D. Number of graves per lot. No lot at any Town cemetery may be used for the burial of more than one body except in the following circumstances:

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

## SECTION X - 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 notifies the office of the Town clerk or the sexton of their desire therefor. 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 a.m. and 5 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.

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 foundations are set and before any cemetery deed is delivered. All outstanding charges due the Town must be paid prior to burial.

## SECTION XI - 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 XII - 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. Flower beds. Individual flower beds or growing plants other than trees or shrubs are not permitted at any Town cemetery.

### SECTION XIII - 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 Town Board or the sexton may notify, or attempt to notify, in writing, a lot owner that any lot, or monument or marker thereon, is being neglected and that failure to comply with this ordinance, or failure to correct a neglected lot, may be cause for imposition of forfeitures under § 157.11(2), Wis. Stats.
- B. Schedule of payments. A schedule of the fees and charges for any Town cemetery, as established by the Town Board by resolution shall be on file in the office of the Town clerk. The Town Board may by resolution change the schedule from time to time without advance notice to conform the fees and charges to current economic conditions.
- C. 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 a Town cemetery or any part of the operations. 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. 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.
- D. 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 XIV - PENALTIES

- A. Citation. The Town Board may establish a citation ordinance for enforcement of violations of this ordinance.
- B. Penalties. Any person who violates any provision of this ordinance shall, upon conviction, be fined and shall forfeit 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.

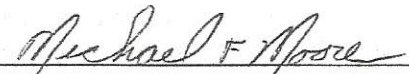
C. Abatement.

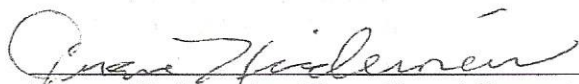
1. In lieu of or in addition to any other penalty for a violation of this ordinance, if the violation consists of a physical condition, the Town Board may issue a written notice to the person responsible for the violation, if known, requiring the person responsible to abate or remove the violation within 10 days of receipt of the notice. Service of notice shall be by personal service or registered mail with return receipt requested.
2. If the person responsible for the violation of this ordinance is unknown or the person responsible has not abated or removed the violation within 10 days of service of the notice described in paragraph 1, the sexton, or some other person designated by the Town Board, may immediately abate or remove the violation in a manner approved by the Town Board. The cost of the abatement or removal may be recovered from the person responsible for the violation.

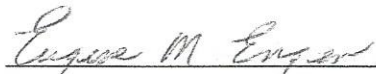
- D. Injunctive relief. In lieu of or in addition to any other penalty for a violation of this ordinance the Town Board may seek to enjoin any continuing violation of this ordinance as provided in Ch. 813, Wis. Stats.

SECTION XV - EFFECTIVE DATE

This ordinance shall take effect and be in force from and after the day of passage and publication as required by law.

  
Michael F. Moore, Town Chairman

  
Duane Niedermeier, Town Board Supervisor

  
Eugene Engen, Town Board Supervisor