

Ordinance No. 2022-04
Town of Dakota Cemetery Ordinance

SECTION I - AUTHORITY

The Town Board of the Town of Dakota 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 II - 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 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 IV, 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 Dakota, Waushara County, Wisconsin.
- H. "Town board" means the board of supervisors for the Town of Dakota, Waushara 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 Dakota, Waushara County, Wisconsin, under s. 157.50, Wis. Stats., that is located within the town.
- J. "Town chair" means the chairperson of the Town of Dakota, Waushara County, Wisconsin.
- K. "Town clerk" means the clerk of the Town of Dakota, Waushara County, Wisconsin.
- L. "Town treasurer" means the treasurer of the Town of Dakota, Waushara County, Wisconsin.
- M. "Wis. Stats." means the Wisconsin Statutes, including successor provisions to cited statutes.

SECTION IV - STATEMENT OF POLICY

Dakota town cemeteries are 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 V - 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 Waushara 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 of Dakota cemetery, certain lots as a single grave section, and the lots within each grave section shall be platted.
- 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 Waushara County, Wisconsin. No cemetery shall be located, established, or dedicated contrary to s. 157.065 or 157.128, Wis. Stats. 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 30 days after receipt of written notice from the town board to remove said remains is declared to be a public nuisance. The town may commence an action for penalties. 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 VI - PURCHASE PRICE OF LOTS IN TOWN CEMETERY

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.

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 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 chair and/or town clerk shall complete paperwork assigning ownership of the cemetery plot and a copy of this paperwork shall be filed in the records of the town as evidence of ownership of the lot. Lots sold by the town may not be subdivided except by consent in writing of the town board.
- B. Burial.
1. 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.
 2. Unless otherwise directed in a writing filed with the town clerk by the lot owner under paragraph 1, 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.
- 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.
- E. Reburial.
1. In this subsection, "reburial" means to disentomb, disinter, or disinter human remains that are buried in a cemetery and reentomb, reinter, 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 VIII - CARE OF LOTS AT THE TOWN CEMETERY

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.

SECTION IX - PRIVILEGES AND RESTRICTIONS IN TOWN CEMETERIES

- A. Bylaws and regulations. The town board may adopt bylaws and regulations for the management and care of any town cemetery and may enforce those bylaws and regulations under s. 157.11 (2), Wis. Stats. The town board may require any person owning or controlling a cemetery lot to do anything necessary to comply with the bylaws or regulations by giving reasonable personal notice in writing if the person is a resident of the state, otherwise by publishing a Class 3 notice, under Chapter 985, Wis. Stats., in the county. If the person fails to comply within 20 days thereafter, the town board may cause the action required to be done and recover the expense from the person required to take the action. The town board may also impose a forfeiture not exceeding \$10 for violation of the bylaws or regulations posted in 3 conspicuous places in the cemetery, recoverable under Chapter 778, Wis. Stats.
- B. Mounds prohibited. No person may raise the level of the earth over any grave in a town cemetery above the general level of the cemetery lot.
- C. Limitations on structures and urns.
 1. In this subsection "urn" means a vessel for the display of flowers or plants that is attached to a lot or is of such weight, as determined by the town board or sexton, that it cannot be readily moved from its placement on the lot. "Urn" does not include a vessel containing cremated human remains properly inured on the lot.
 2. No structures, hedges, fences, railings, embankments, depressions, or other enclosures of any kind are permitted on or around lots in any town cemetery. Wooden boxes, wire containers, glass jars, bottles, toys, cans, memorials, memorabilia, personal items, and other similar objects may not be placed on lots without written approval of the town board or the sexton, and if so placed may be removed by the town board or the sexton without oral or written notice. Urns are not permitted at any town cemetery on lots sold after the passage of this ordinance. Urns existing in town cemeteries prior to the passage of this ordinance shall be removed by the town or the sexton as they become unsightly or deteriorated and shall not be replaced.
- 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.
- E. 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.
- F. 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.

- G. 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.
- H. 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 X - RULES FOR VISITORS TO TOWN CEMETERIES

- A. Vehicles. Motor vehicles traveling within any town cemetery may not exceed 5 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.
- B. 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.
- C. 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 XI - 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. 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. The town board or the sexton may charge the full cost for any grave digging and opening service provided by the town at any town cemetery, including the fees for the sexton or other designee of the town board, for staking the plot, if the town board has authorized the town or its officers, employees, contractors, or agents, including the sexton or other designees, to provide grave staking, grave openings, or digging services. 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. Arrangements for any disinterment or burial services, including payments due to the town, shall be made with the town clerk, the sexton, or other person designated by the town board at least 48 hours in advance of the service. 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. 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.

- E. 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 or two flat markers 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 or two flat markers 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.
- F. 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 XII - TOWN CEMETERY MONUMENTS AND MARKERS

A. Setting grave markers.

1. Grave markers, monuments, and foundations at any town cemetery may be set only after the person desiring to set the marker, monument, or foundation obtains permission therefor from the town chair, the town clerk or the sexton. Grave markers, monuments, and foundations at any town cemetery may be set by monument company employees or agents, 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. 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. Temporary markers shall be removed or replaced with a permanent marker within one year of burial.
 5. A preneed marker may be placed on a lot or group of lots before burial.
 6. No materials other than granite, marble, or standard bronze may be used for outside and above-ground portions of any marker or monument.
 7. Within one year after burial, a marker or monument identifying the burial shall be placed at the grave site.
- 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 the town issues documentation conveying ownership of the lot. All outstanding charges due the town must be paid prior to burial.

SECTION XIII - TOWN CEMETERY VAULTS AND MAUSOLEUMS

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

SECTION XIV – TREES AND SHRUBS AT TOWN CEMETERY

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.

SECTION XV - 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 and town cemetery bylaws and regulations regarding proper care and management, or failure to correct a neglected lot, may be cause for imposition of forfeitures under s. 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. Fee payment location. All fees and charges for any town cemetery in the current schedule of fees and charges adopted under subsection B are payable to the town treasurer at the town hall, where receipts will be issued for the amounts paid.
- D. 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.

- E. 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 XVI - EFFECTIVE DATE

This ordinance is effective on publication or posting.

The town clerk shall properly post or publish this ordinance, as required under s. 60.80, Wis. Stats.

Ordinance No. 2022-04

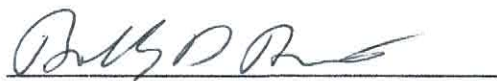
Ayes: 3 Nays: 0 Abstain: 0 Absent: 0 Voice Vote

Approved and enacted this 12th day of December 2022.

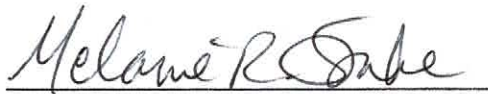
Denied this 12th day of December 2022.

Signed:

Attest:



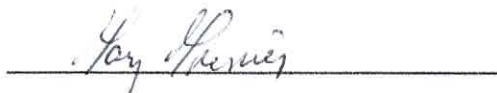
Bobby Bandt, Chair



Melanie R. Stake, Clerk



Jeremy Kubasta, Supervisor #1



Gary Grenier, Supervisor #2