

DRAFT

Township Cemetery Ordinance

HAYES TOWNSHIP
CHARLEVOIX COUNTY, MICHIGAN
(Ordinance No. _____)

An ordinance to protect the public health, safety and general welfare by establishing regulations relating to the operation, control, maintenance and management of cemeteries owned, controlled or operated by the Township of Hayes, in Charlevoix County, Michigan; to provide penalties for the violation of said ordinance, and to repeal all ordinances or parts of ordinances in conflict therewith.

THE TOWNSHIP OF HAYES, COUNTY OF CHARLEVOIX, MICHIGAN ORDAINS:

Section 1. Title

This Ordinance shall be known and cited as the “Hayes Township Cemetery Ordinance.”

Section 2. Purpose and Intent

The Hayes Township Board recognizes and concludes that the proper and reasonable maintenance, appearance and use of the cemetery or cemeteries owned or controlled by the Township is an important function of the government of the Township. It is also important that burials, disinterments and other matters associated with a municipal cemetery are handled in a respectful and proper way in order to promote the safety, public health and general welfare of the community. The Township Board finds that the adoption and enforcement of this Ordinance is in the best interests of the property owners and residents of the Township.

Section 3. Definitions

- (a) A “burial space” shall consist of an area in a Township cemetery sufficient to accommodate one burial space for one deceased person. Exceptions may be made with Township permission to accommodate infant burial or the burial of cremains.
- (b) “Infant” means someone who is two years or younger at the time of death.
- (c) “Township” means Hayes Township.
- (d) “Township cemetery” or “cemetery” means any cemetery owned, operated and/or controlled by the Township.
- (e) “Township Clerk” means the elected Township Clerk and/or other designee(s) of the Township Board.

Section 4. Sale of Cemetery Burial Spaces; Nontransferable

- (a) After the effective date of this Ordinance, cemetery burial spaces shall be sold by the Township for the purpose of burial for the purchaser of a burial space, or his or her immediate family. No sale shall be made to funeral directors or others, except for those acting as an agent for an eligible purchaser.

- (b) All sales and transfers of burial spaces shall be made on a form approved by the Township Board, which grants a right of burial only and does not convey any other title or right to the burial space sold. Such forms shall be signed by the Township Clerk, and shall then constitute a permit.
- (c) Burial spaces may be sold by the Township to any resident or taxpayer of the Township. The Township Clerk is hereby granted the authority to vary the aforesaid restriction on sales where the purchaser discloses sufficient personal reason for burial within the Township through previous residence in the Township or relationship to persons interred in the Township cemetery involved. Any such decision by the Township Clerk (either granting or denying such variance) may be overturned by the Township Board pursuant to Section 23 hereof.
- (d) At the time of purchase from the Township, each burial space shall be assigned the name of the specific person who shall be interred in that burial space upon death. Each such person must either be a resident or taxpayer of the Township, or be a member of the immediate family of a qualified purchaser. If the owner of a burial space desires to effectuate a name change regarding the assigned burial space, that person must request in writing such change to another eligible person and receive approval from the Township Clerk.
- (e) Ownership of burial spaces is nontransferable without prior written approval by the Township, and may be sold back at a price set by the Township Board (for resale by the Township).
- (f) The Township Board shall have the authority to place a limit on the number of burial spaces sold to a particular person, as well as such person's family and relatives. Furthermore, the Township shall have the absolute right and discretion to determine whether a particular burial space or spaces will be sold to a specific person and where such burial space or spaces will be located and within which Township cemetery. Such decision shall be based upon reasonable factors, including, but not limited to, the number of vacant burial spaces available and whether family or relatives of the person seeking to purchase a burial space or spaces are buried adjacent or nearby the burial space or spaces requested.
- (g) The Township shall have the right to correct any errors that may be made concerning interments, disinterments, or in the description, transfer or conveyance of any burial space, either by canceling the permit for a particular vacant burial space or spaces and substituting and conveying in lieu thereof another vacant burial space or spaces in a similar location within the cemetery at issue or by refunding the money paid for the burial space to the purchaser or the successor of the purchaser. In the event that an error involves the interment of the remains of any person, the Township shall have the right to remove and transfer the remains so interred to another burial space in a similar location in the same Township cemetery in accordance with law.
- (h) The owner of every burial space shall be responsible for notifying the Township whenever that person's mailing address changes.

Section 5. Purchase Price for Burial Spaces; Indigent Burials

- (a) The Township Board shall by resolution set the fees for each burial space. The lawful owner of any burial space within the Township shall promptly provide the Township Clerk with any change in that owner's mailing address.
- (b) All charges shall be paid to the Township.
- (c) The Township Board may waive some or all fees for the burial of indigent persons. Furthermore, the Township Board may set aside a portion of a Township cemetery or cemeteries for the burial of indigent persons.
- (d) The Township Board may by resolution periodically alter the foregoing fees to accommodate increased costs and needed reserve funds for cemetery maintenance and acquisition.

Section 6. Grave Opening Charges

- (a) The Township may charge reasonable fees for the opening and closing of any burial space, prior to

and following a burial therein, and including the interment of ashes. Such fees shall be set from time to time by resolution of the Township Board, payable to the Township.

- (b) No burial space shall be opened or closed except under the direction and control of the Township Sexton or such other individual as is designated by the Township Board. This subsection (b) shall not apply to any grave opening, disinterment, or similar matter which is done pursuant to a valid court order or under the supervision and direction of local or state health department authorities; however, even in such cases, the Township Sexton shall be given at least twenty-four (24) hours' prior notice of when such grave opening or closing will occur.

Section 7. Markers or Memorials; No Monuments

- (a) All markers and memorials must be comprised of stone or other equally durable composition and shall face the same direction as the markers and memorials around them.
- (b) Except for monuments that existed in a Township cemetery before the effective date of this Ordinance, no monument will be allowed or erected in a cemetery. For purposes of this Ordinance, "monument" shall be defined as any marker, memorial, statue or similar item which exceeds thirty (30) inches in height above normal ground level or which has a ground surface area exceeding thirty (30) inches in width (or forty-eight (48) inches in width for a double marker), with an overall height of no more than thirty (30) inches above ground level, including the foundation. Only one (1) marker or memorial shall be permitted per burial space, or one marker or memorial in total where two adjoining spaces share that one marker or memorial. Markers shall be no more than thirty (30) inches in width (or forty-eight (48) inches in width for a double marker), with an overall height of no more than thirty (30) inches above ground level, including the foundation. Individual markers for cremains shall be flush with the ground and shall be no more than twelve (12) inches by twenty-four (24) inches in size.
- (c) The footing or foundation upon which any marker or memorial must be placed shall be constructed by the Township, or such person(s) as may be designated by the Township Board. Fees for such work shall be set from time to time by resolution of the Township Board, and shall be paid to the Township.
- (d) Should any monument or memorial (including any monument or memorial that was in place before this Ordinance became effective) become unsightly, broken, moved off its proper site, dilapidated or a safety hazard, the Township Board shall have the right, at the expense of the owner of the burial space, to correct the condition or remove the same. The Township shall make reasonable attempts to contact the owner of the burial space prior to any such work beginning.
- (e) The maintenance, repair and upkeep of a cemetery memorial, marker, urn or similar item is the responsibility of the heirs or family of the person buried at that location. The Township has no responsibility or liability regarding the repair, maintenance or upkeep regarding any such marker, memorial, urn or similar item.

Section 8. Interment Regulations

- (a) Only one (1) person shall be buried in a burial space, except for a parent and infant child or two (2) infants buried at the same time when approved by the Township.
- (b) The Township shall be given not less than 36 hours' prior notice in advance of any funeral to allow for the opening of the burial space. The opening and closing of burial spaces shall be done only by the Township or such person or persons as are designated by the Township.
- (c) The appropriate permit or form issued by the Township for the burial space involved, together with appropriate identification of the person to be buried therein and the burial-transit permit from the health department, shall be presented to either the Township Sexton or the Township Clerk prior to interment. Where such permit or form has been lost or destroyed, the Township Clerk must be satisfied, from his or her records, that the deceased person to be buried in the burial space is an authorized and appropriate person for that space before any interment is commenced or completed.
- (d) The surface of all graves shall be kept in an orderly and neat-appearing manner within the confines

of the burial space involved.

Section 9. Disinterments

- (a) No disinterment or digging up of an occupied grave shall occur until and unless any and all permits, licenses and written authorizations required by law for such disinterment or digging up of an occupied grave have been obtained from any applicable state or county agency, governmental unit or official, and a copy of the same has been filed with the Township.
- (b) The Township Board shall have the authority to refuse to allow a disinterment or the digging up of an occupied grave if the disinterment or digging up of an occupied grave is not done pursuant to a court order (issued by a court of competent jurisdiction) or does not have a reasonable basis.

Section 10. Winter Burials

- (a) The Township may charge additional fees for winter burials.
- (b) If a winter burial cannot occur due to inclement weather, frozen ground or similar condition, the deceased person may be kept in winter storage until a spring burial can occur. Written permission by the next of kin or authorized agent must be obtained prior to winter storage. All such winter storage costs shall be paid by the estate of the deceased person or the person's next of kin.
- (c) No winter burials shall occur without the prior consent of the Township Sexton.

Section 11. Cremains

- (a) Cremains may be buried in a container approved by the Township in a burial space or in a columbarium that has been installed by the Township within a Township cemetery. A single burial space may be used for two cremations.
- (b) No cremains shall be scattered or dispersed within a Township cemetery.

Section 12. Grounds Maintenance

- (a) Flower pots, urns and grave blankets may be placed and maintained at the head stones of graves no earlier than May 1 and must be removed no later than November 1 of each year. Decorations will be permitted for holidays falling outside of these dates, but only for one (1) week prior and one (1) week following the holiday. Veteran flags and flag holders shall be governed by the Veteran's Administration rules and guidelines.
- (b) No grading, leveling or excavating within a cemetery shall be allowed without the prior permission of the Township Sexton or the Township Clerk. Furthermore, no tree, shrub, landscaping or similar plantings shall occur without the prior permission of the Township Sexton or the Township Clerk.
- (c) No flowers, shrubs, trees or vegetation of any type shall be planted outside of an urn. Any of the foregoing items planted without Township approval will be removed by the Township or the Township Sexton.
- (d) The Township Board reserves the right to remove or trim any existing trees, plants or shrubs located within a cemetery in the interest of maintaining proper appearance and the use of the cemetery.
- (e) Mounds, bricks, blocks and any borders that hinder the free use of a lawn mower or other gardening apparatus are prohibited.
- (f) The Township Sexton shall have the right and authority to remove and dispose of any and all growth, emblems, displays, containers and other items that through decay, deterioration, damage or otherwise become or are unsightly, a source of litter or a maintenance problem.
- (g) Surfaces other than earth or sod are prohibited.

- (h) All refuse of any kind or nature including, but not limited to, dried flowers, wreaths, papers and plastic flower containers must be removed from the cemetery within 10 days after a burial.
- (i) No glass containers or items are allowed.
- (j) Except for markers, memorials, flowers, and urns expressly allowed by this Ordinance, and veteran flags as authorized by law, no other item (including, but not limited to, ornaments, signs, trellises, statues, benches, landscaping, bricks, stones, grave border materials or other structures) shall be installed or maintained within a Township cemetery, nor shall any grading, digging, mounding or similar alteration of the ground or earth occur except as authorized by this Ordinance or by the Township.

Section 13. Disclaimer of Township Liability and Responsibility

Every person who enters, remains in and travels within a Township cemetery does so at their own risk. The Township is not responsible for any injury, accident or other calamity that might occur to any person present in a Township cemetery. Furthermore, the Township is not responsible for any damage or vandalism to, theft of or deterioration of any burial monument, headstone, flower urn or other item placed at or near a burial space, burial site or anywhere in a Township cemetery. The purchaser or transferee of any burial space or the equivalent (and all subsequent transferees, assigns, heirs, or beneficiaries) hereby releases, waives, indemnifies and holds harmless the Township for, from and against any injury, damages, causes of action, claims, costs and expenses associated with, relating to and/or involving the burial space or similar right, any headstone, monument or similar items, and any matter related to the cemetery involved. Such waiver, release and hold harmless provision shall apply not only to the Township, but also as to the Township Sexton and any Township employee, officer, official or agent.

Section 14. Forfeiture of Vacant Burial Spaces

Burial spaces sold after the effective date of this Ordinance and remaining vacant for forty (40) years or more from the date of their sale shall automatically revert to the Township upon the occurrence of the following events:

- (a) Notice shall be sent by the Township Clerk by first-class mail to the last known address of the last owner of record informing him/her of the expiration of the 40-year period and that all rights with respect to said burial spaces will be forfeited if he/she does not affirmatively indicate in writing to the Township Clerk within sixty (60) days from the date of mailing of such notice of his/her desire to retain such burial rights; and
- (b) No written response to said notice indicating a desire to retain the burial spaces in question is received by the Township Clerk from the last owner of record of said spaces, or his/her heirs or legal representative, within sixty (60) days from the date of mailing of said notice.

Section 15. Repurchases of Burial Spaces

The Township may repurchase any burial space from the owner for a price set by the Township Board, upon the written request of said owner or his or her legal heirs or representatives.

Section 16. Records

The Township Clerk shall maintain records concerning all burials, burial spaces, issuance of burial permits and any other records of the Township related to Township cemeteries, and the same shall be open to public inspection at all reasonable business hours.

Section 17. Vaults

- (a) A standard vault is not required to be installed or constructed in a burial space before interment in the cemetery. When a body is buried without a vault the cost of grave opening and closing will be adjusted upward by the Township Board in an amount not to exceed the cost of a vault at the time of the opening and closing to reflect the cost of future filling and seeding of that site. If a vault is used it shall be a standard concrete vault (which meets all applicable laws) installed or constructed in each burial space before interment. Vaults of other suitable materials may be allowed at the discretion of the Township.
- (b) Cremains shall be in a container approved by the Township.

Section 18. Cemetery Hours

Unless otherwise specified by the Township Board by resolution, all Township cemeteries shall be closed during the hours from 9 p.m. until 7 a.m. the next morning. During those hours, no person shall be present in a Township cemetery. Such prohibition on being present in a Township cemetery during the time when a Township cemetery is closed shall not apply to the Township Sexton, any Township official, a person accompanied by the Township Sexton or other Township official, or any law enforcement or firefighting official when engaged in the lawful duties of any such office or position.

Section 19. Prohibited Uses and Activities

The following prohibitions shall apply within any Township cemetery:

- (a) No person shall destroy, deface, apply graffiti to or otherwise injure any monument, sign, tree or other lawful item located within a Township cemetery.
- (b) No person shall disturb the peace or unreasonably annoy, harass or disturb any other person who is lawfully present on the grounds of any Township cemetery.
- (c) No vehicles shall be permitted to drive on lawns or burial spaces in a cemetery.
- (d) There shall be no entry or presence in the cemetery by any person when the cemetery is closed or outside of authorized times.
- (e) There shall be no destruction of cemetery property.
- (f) There shall be no headstones, ornaments, vases, plastic flowers, fences, benches, trellises, statues, signs or any other item placed, kept, installed or maintained in a cemetery except those expressly allowed by this Ordinance.
- (g) There shall be no digging, grading or mounding unless expressly authorized by this Ordinance.
- (h) There shall be no driving of an automobile, truck or any vehicle on any portion of a cemetery except the designated roads or drives.
- (i) There shall be no gathering of persons in excess of 75 people without prior Township approval (except during or incidental to a funeral occurring concurrent with burial).
- (j) There shall be no disinterment or grave openings unless approved by the Township.
- (k) There shall be no possession or consumption of any alcoholic beverage.
- (l) There shall be no picnicking or consumption of food without prior Township approval.
- (m) There shall be no music, playing of any radio, or the use of any amplification device or similar item, except pursuant to a military ceremony or a funeral.
- (n) There shall be no solicitation or peddling of services or goods or any signs or placards advertising any goods or services.
- (o) There shall be no littering or dumping. There shall be no dumping, vandalizing or tipping over of any lawful garbage container or receptacle.
- (p) There shall be no unlawful interference with or disruption of a lawful funeral or funeral procession.
- (q) There shall be no private signs, lighting, moving displays or changeable copy on a sign.

- (r) There shall be no fires, candles or open flames.
- (s) No children under twelve (12) years of age shall be allowed in any Township cemetery unless accompanied by an adult and are properly supervised by an adult.
- (t) There shall be no domestic animals of any kind or pets allowed within the cemetery grounds. However, this prohibition shall not apply to dogs assisting handicapped persons.
- (u) No firearms or archery arrows shall be discharged or shot except that military or other veteran's organizations may carry arms for the purpose of firing over the grave at the burial of a member.
- (v) No person shall engage in any fight, quarrel or disturbance.

Section 20. Authority of the Township Sexton

- (a) The Township Board shall appoint a Township Sexton, who shall serve at the discretion of the Township Board. The Township Sexton may be a Township employee or independent contractor for the Township at the discretion of the Township Board.
- (b) The Township Sexton shall assist other Township officials with the enforcement and administration of this Ordinance.
- (c) The Township Sexton shall have such duties and obligations with regard to Township cemeteries as may be specified from time to time by the Township Board.

Section 21. Fees

The Township Board shall have the authority to set fees pursuant to this Ordinance from time to time by resolution. Such fees can include, but are not limited to, a fee or fees for a burial permit, disinterment permit, grave opening, setting of foundations, grave closing, winter or holiday burial, the price for a new burial space, transfer fees for burial spaces, and other matters. Any check for fees pursuant to this Ordinance should be made out to the Township or the Township Treasurer and not to the Sexton or any other individual Township employee.

Section 22. Applicability of this Ordinance

- (a) This Ordinance shall apply only to cemeteries owned, controlled or operated by the Township.
- (b) The provisions of this Ordinance shall not apply to Township officials or their agents or designees involved with the upgrading, maintenance, administration or care of a Township cemetery.
- (c) The provisions of this Ordinance shall not apply to police officers or firefighting officials or officers involved in carrying out their official duties.

Section 23. Interpretation/Appeals to the Township Board

- (a) The Township Board shall have the authority to render binding interpretations regarding any of the clauses, provisions or regulations contained in this Ordinance and any rule or regulation adopted pursuant to this Ordinance, as well as their applicability. The Township Board (or its designee) is also authorized to waive application of the strict letter of any provision of this Ordinance or any rules or regulations promulgated under this Ordinance where practical difficulties in carrying out the strict letter of this Ordinance or any rules or regulations related thereto would result in hardship to a particular person or persons or the public. Any such waiver, however, must be of such a character as it will not impair the purposes and intent of this Ordinance.
- (b) Any party aggrieved by any interpretation or decision made by the Township Sexton or any Township official, agent or contractor pursuant to this Ordinance, as well as any matter relating to a Township cemetery, rights to a burial space, or other matter arising pursuant to this Ordinance, shall have the right to appeal that determination/decision or matter to the Township Board. Any such appeal shall be in writing and shall be filed with the Township within thirty (30) days of the date of the decision, determination or other matter being appealed. The Township shall give the aggrieved party who filed

the written appeal with the Township at least ten (10) days prior written notice of the meeting at which the Township Board will address the matter unless an emergency is involved, in which case the Township shall utilize reasonable efforts to notify the aggrieved party who filed the appeal of a special or emergency meeting of the Township Board at which the matter will be addressed. Pursuant to any such appeal, the decision of the Township Board shall be final.

(c) The Township Board may set a fee or fees for any such appeal from time to time by resolution.

Section 24. Authority of the Township to Remove Unauthorized or Unlawful Items from a Township Cemetery

Any monument, marker, planting, trellis, personal item, urn, flowers or foliage (whether real or artificial), structure, flag (except for lawful veterans flags), or other item that has been placed, installed, left or maintained in any Township cemetery in violation of this Ordinance, any Township rule or regulation regarding Township cemeteries, or any county, state or federal law, statute or regulation may be removed by the Township from the Township cemetery at any time and destroyed or disposed of by the Township without any prior notice to, permission from, or liability or obligation to the person or persons who left, installed, maintained or kept such item in the Township cemetery. No such item (including, but not limited to, a monument, marker, planting, trellis, personal item, urn, flowers or foliage, structure, flag, or similar item) can be installed, placed, maintained or kept in a Township cemetery unless expressly authorized by this Ordinance or a written rule or policy of the Township. Even if such an item is authorized to be installed, kept, maintained or left in a Township cemetery, the Township shall still have the discretion to remove any such item at any time and dispose of the same without prior notice to, consent from or liability to the person or persons who installed, maintained or left such item in a Township cemetery.

Section 25. Penalties

A violation of this Ordinance (or of any rule or regulation adopted pursuant to this Ordinance) constitutes a municipal civil infraction. Any person who violates, disobeys, omits, neglects or refuses to comply with any provision of this Ordinance, or any permit or approval issued hereunder, or any amendment thereof, or any person who knowingly or intentionally aids or abets another person in violation of this Ordinance, shall be in violation of this Ordinance and shall be responsible for a civil infraction. The civil fine for a municipal civil infraction shall be not less than one hundred dollars (\$100) for the first offense and not less than two hundred dollars (\$200) for subsequent offenses, in the discretion of the court, in addition to all other costs, damages, expenses and remedies provided by law. For purposes of this section, "subsequent offense" means a violation of the provisions of this Ordinance committed by the same person within twelve (12) months of a previous violation of the same provision of this Ordinance or similar provision of this Ordinance for which said person admitted responsibility or was adjudged to be responsible. Each day during which any violation continues shall be deemed a separate offense.

A violation of any permit or permit condition issued pursuant to this Ordinance shall also constitute a violation of this Ordinance.

Section 26. Township Officials Who Can Enforce this Ordinance

Unless otherwise specified by the Township Board by resolution, the following officials or officers shall have the authority to enforce this Ordinance and to issue municipal civil infraction citations/tickets pursuant to this Ordinance:

- Township Supervisor
- Township Clerk
- Township Sexton
- Any deputy of the County Sheriff's department
- Any State Police officer

Section 27. Severability

The provisions of this Ordinance are hereby declared to be severable and should any provision, section or part thereof be declared to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall only affect the particular provision, section or part thereof involved in such decision and shall not affect or invalidate the remainder of this Ordinance, which shall continue in full force and effect.

Section 28. Effective Date; Conflicts

This Ordinance shall become effective thirty (30) days after a copy of this Ordinance (or summary thereof)

appears in the newspaper. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

The above Ordinance was offered for adoption by Township Board Member _____
and was seconded by Township Board Member _____, the vote being as follows:

YEAS:

NAYS:

ABSENT/ABSTAIN:

ORDINANCE DECLARED ADOPTED.

CERTIFICATION

I hereby declare that the above is a true copy of an ordinance adopted by the _____ Township Board
at a _____ meeting held on _____, _____, at the _____ Township Hall, pursuant to
the required statutory
procedures.

Dated: _____, 20_____

Respectfully submitted,

By _____, _____ Township Clerk