

**Hamilton Township
Clare County, Michigan**

CEMETERY ORDINANCE

An ordinance to secure the public health, safety and general welfare of the residents and property owners of Hamilton Township of Clare County, by establishing regulations relating to the operation, control, and management of the cemeteries owned by the Township of Hamilton, Clare County, Michigan; to provide penalties for the violation of said ordinance.

**The Township of Hamilton
Clare County, Michigan**

ORDAINS

**Section 1
Title**

This Ordinance shall be known and cited as the Hamilton Township Cemetery Ordinance.

**Section 2
Definitions**

Definitions of cemetery lots and burial plots:

- a) A "cemetery lot" shall consist of an area sufficient to accommodate from two to four burial plots.
- b) A "burial plot" shall consist of a land area approximately eight (8) feet wide and ten (10) feet in length.
- c) "Township" means Hamilton Township
- d) "Township cemetery" or "cemetery" means any cemetery owned, operated and/or controlled by the Township.

**Section 3
Sales of Burial Plots**

- A. After the effective date of this Ordinance, 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 the 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.

- 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, but 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 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 the 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 4 Purchase Price and Transfer Fees

- A. To determine the cost of each burial plot, please contact Hamilton Township clerk. These fees are subject to change by resolution of the Township Board.
- B. All charges shall be paid to the Township.
- C. 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 5 Grave Opening Charges

No burial plots shall be opened and/or closed except under the direction and control of the Township Cemetery Sexton. This provision shall not apply to proceedings for the removal and re-interment of bodies and remains which matters are under the supervision of the local health department or, in legal matters, by court order.

Section 6 Markers or Memorials

- A. All markers or memorials must be of stone or other equally durable composition set upon a foundation. 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, for such work shall be set from time to time by resolution of the Township Board, and shall be paid to the Township.
- B. Only one monument, marker, or memorial shall be permitted per burial plot with the exception of Veteran's memorials placed by the Township Cemetery Sexton. The marker must be placed at the head of the burial plot.
- C. Any large upright monuments must be located upon a suitable foundation to maintain the same in an erect position.

Section 7 Interment Regulations

- A. A minimum notice of 36 hours must be given to allow for the opening of a burial plot/s.
- B. Only one vault may be buried in a burial plot and up to one additional container of cremains may be buried on top of such vault.
- C. Up to four (4) containers of cremains may be interred in any burial plot where no other remains are buried.
- D. The appropriate permit for the burial plot involved, together with appropriate identification of the person to be buried therein, where necessary, shall be presented to either the Township Cemetery Sexton or the Township Clerk prior to interment. Where such permit has been lost or destroyed, the Township Clerk or the Township Cemetery Sexton shall be satisfied by his/her records that the person to be buried in the burial plot is an authorized and appropriate one before any interment is commenced or completed.
- E. All graves shall be located in an orderly and neat appearing manner within the confines of the burial plot involved.
- F. Green Burials are prohibited.

Section 8 Ground Maintenance

- A. No grading, leveling, or excavating on burial plots shall be allowed without the permission of the Township Cemetery Sexton. Mounds which hinder the free use of a lawn mower or other gardening apparatus are prohibited.
- B. No shrubs, trees, or vegetation of any kind (except flowers) shall be planted without the approval of the Township Cemetery Sexton. Any of the foregoing items planted without approval may be removed by the Township or Township Cemetery Sexton.
- C. All flowers planted shall be within a maximum of 8" of the base of the marker for mowing purposes.
- D. The Township Cemetery Sexton shall have the right and authority to remove and dispose of any and all growth, emblems, displays, or containers that through decay, deterioration,

damage, or otherwise become unsightly, a source of litter or a maintenance problem. Removal of any or all wintertime decorations will be taken care of by the Township Cemetery Sexton no sooner than April 1st each year.

- E. All refuse of any kind or nature including, but not limited to, dried flowers, wreaths, paper and plastic flower containers must be removed from the Township cemetery.
- F. Cemetery access roads will be plowed and/or maintained during winter months for burial or maintenance purposes only.
- G. 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 9 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, marker, 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 Township cemetery plots.
- (d) There shall be no entry or presence in the Township cemetery by any person when the cemetery is closed or outside of authorized times.
- (e) There shall be no destruction of Township cemetery property.
- (f) There shall be no destruction, defacing, cutting, etc., of any tree or plant within a Township cemetery.
- (g) There shall be no disturbing of the peace or engaging in any loud or boisterous behavior.
- (h) There shall be no digging, grading or mounding unless expressly authorized by this Ordinance.
- (i) There shall be no driving of an automobile, truck or any vehicle on any portion of a Township cemetery except the designated roads or drives.
- (j) There shall be no motorcycles, snowmobiles, four-wheelers, go-carts or similar vehicles without permission of the Township.
- (k) There shall be no disinterment or grave openings unless approved by the Township.
- (l) There shall be no possession or consumption of any alcoholic beverage.
- (m) There shall be no littering or dumping.
- (n) There shall be no unlawful interference with or disruption of a lawful funeral or funeral procession.
- (o) There shall be no fires, candles or open flames.
- (p) 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.
- (q) No firearms or archery arrows shall be discharged except that military or other veterans

organizations may carry arms for the purpose of firing over the grave at the burial of a member.

- (r) Cremains or ashes of a deceased person shall not be scattered or dispersed within the Township cemetery.

Section 10
Authority of the Township Cemetery Sexton

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

Section 11
Fees

The Township Board shall have the authority to set fees pursuant to this Ordinance 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 Township cemetery lot/plot, transfer fees for cemetery lots/plots, and other matters.

Section 12
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 13
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 Cemetery 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 cemetery lot/plot, 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 meeting.

Section 14 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, marker, monument, headstone, flower urn or other item placed at or near a Township cemetery lot, burial plot or anywhere in a Township cemetery. The purchaser or transferee of any Township cemetery lot or burial plot (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 Township cemetery lot, burial plot or similar right, any headstone, marker, monument or similar items, and any matter related to the Township cemetery involved. Such waiver, release and hold harmless provision shall apply not only to the Township, but also as to the Township Cemetery Sexton and any Township employee, officer, official or agent.

Section 15 Forfeiture of Vacant Township Cemetery Plots or Burial Lots

Township cemetery lots or burial plots 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 registered 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 cemetery lots or burial plots 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 cemetery lots or burial plots in question is received by the Township Clerk from the last owner of record of said lots or plots, or his/her heirs or legal representative, within sixty (60) days from the date of mailing of said notice. The Township may repurchase any Township

cemetery lot or burial plot from the owner as set forth in Section 16 of this Ordinance.

Section 16 Repurchase of Lots or Burial Plots

Hamilton Township will repurchase any Township cemetery lot/s or burial plot/s from the owner for a price set by the Township Board upon written request of said owner or his/her legal heirs or representatives.

Section 17 Records

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

Section 18 Township Cemetery Hours

- A. The Hamilton Township cemetery shall be open to the general public from sun-up to sun-down each day all year
- B. No person shall be permitted in a Township cemetery at any other time except upon permission of the Township Board or the Township Cemetery Sexton.

Section 19 Penalties

- A. First Violation is a Municipal Civil Infraction. A violation of this Ordinance, first offense, is a municipal civil infraction. Any property owner or legally responsible party who violates this Ordinance shall, as a first offense, be responsible for a civil infraction, for which the fine shall be \$250.00 plus court costs, fines and restitution.
- B. Second Violation (within two years after municipal civil infraction). A second or repeat violation (within two years after a municipal civil infraction) is a misdemeanor. Any property owner or legally responsible party who violates any provision of this Ordinance a second time within 24 months of the date a civil infraction ticket is issued (whether the violation of this Ordinance is for the same offense as a civil infraction or for some other offense under this Ordinance) shall upon conviction and in a court of competent jurisdiction be guilty of a misdemeanor and be subject to a fine of \$500.00 plus court costs and costs of prosecution that may be ordered by the court. For purposes of this Ordinance, each day that a violation occurs shall constitute a separate offense.
- C. Third Violation (within two years after municipal civil infraction) Any property owner or legally responsible party who violates any provision of this Ordinance a third time within 24 months of the date of the civil infraction ticket is issued (whether the violation of this Ordinance is for the same offense as a civil infraction or for some other offense under this Ordinance) shall upon conviction in a court of competent jurisdiction be guilty of a misdemeanor and be subject to a fine of \$500.00 and/or imprisonment for a period of not

more than 93 days, plus court costs and costs of prosecution that may be ordered by the court. For purposes of this Ordinance, each day that a violation occurs shall constitute a separate offense.

- D. Enforcement. Enforcement of the provisions of this Ordinance shall be the Hamilton Township Zoning Ordinance Enforcement Officer (or such other Hamilton Township Official as may be designated by the Hamilton Township Board), the Hamilton Township Zoning Administrator, the Hamilton Township Attorney, the Clare County Sheriff's Department and/or the Michigan State Police.
- E. Continuing Offense. Each act of violation and each day upon which any such violation shall occur, shall constitute a separate offense.
- F. Remedies Not Exclusive. In addition to any remedies provided for in this Ordinance, any equitable or other remedies available may be sought.
- G. Judge or Magistrate. The Judge or Magistrate shall also be authorized to impose costs, damages, and expenses as provided by law.
- H. Civil Contempt.
 - 1. If a defendant defaults in the payment of a civil fine, costs, damages, expenses, or installment as ordered by the District Court, upon motion of Hamilton Township or upon its own motion, the court may require the defendant to show cause why the defendant should not be held in civil contempt and may issue a summons, order to show cause, or bench warrant of arrest for the defendant's appearance.
 - 2. If a corporation or an association is ordered to pay a civil fine, costs, damages or expenses, the individuals authorized to make disbursements shall pay the fine, costs, damages or expenses, and their failure to do so shall be civil contempt unless they make the showing required in this subsection.
 - 3. Unless the defendant shows that the default was not attributable to an intentional refusal to obey the order of the court or to a failure on his or her part to make a good faith effort to obtain the funds required for a payment, the court shall find that the default constitutes a civil contempt and may order the defendant committed until all or a specified part of the amount due is paid.
 - 4. If it appears that the default in the payment of a civil fine, costs, damages or expenses does not constitute civil contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of payment or of each installment or revoking the fine, costs, damages or expenses.

Section 20 Severability

The provisions of this Ordinance are hereby declared to be severable and if any clause, sentence, word, section or provision is declared void or unenforceable for any reason by any Court of competent jurisdiction, it shall not affect any portion of the Ordinance other than said part of portion thereof.

Section 21 Effective Date

The Ordinance shall become effective immediately upon publication as required by law following adoption by the Hamilton Township Board.