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TO: The Honorable City Council

FROM: David Whitaker, Director
Legislative Policy Division Staff 

DATE: July 24, 2019

RE: ESTABLISHMENT OF A CEMETERY IN DISTRICT 3

The Legislative Policy Division was asked by City Council Member Benson to write a report on the rules, regulations, and process of establishing a cemetery¹.

State Regulations

According to the *Cemetery Regulation Act* of 1968, a cemetery is defined as 1 or a combination of more than 1 of the following:

- A burial ground for earth interments
- A mausoleum for crypt entombments
- A crematory for the cremation for human remains
- A columbarium for the inurnment of cremated remains

A cemetery engaged in any of the activities listed above, that are not owned and operated by a municipality, church, or a religious institution will be subject to *Cemetery Regulation Act* of 1968². Cemeteries owned and operated by a municipality, church, or religious institution are exempt from *Act 251 of 1968*.

¹ This Report attempts to summarize the statutory and regulatory scheme found under Michigan law relative to the establishment of cemeteries, however anyone that is attempting to establish a cemetery should seek advice from counsel having expertise in the area of cemetery establishment, before acting on anything recorded here.

² Department of Licensing and Regulatory Affairs' website: michigan.gov/lara/

A private cemetery is a cemetery that is very small in size, less than one acre, and has burial plots that are restricted for exclusive use by members of a family or a small community³. A public cemetery is one that provides cemetery services to the public. Public cemeteries may be owned by a private entity, a religious institution, an individual or a public entity.

The Application

States are typically responsible for regulating cemeteries. In Michigan, the Corporations, Securities and Commercial Licensing Bureau (CSCL) within the Department of Licensing and Regulatory Affairs (LARA) regulates private cemeteries, excluding cemeteries that are owned and operated by municipalities, churches, or religious institutions. Public Act 251 of 1968, *Cemetery Regulation Act*, gives the Cemetery Commissioner⁴, the authority to investigate and approve applications for a new cemetery. The first step in establishing a new cemetery is to fill out an application for a license and pay a \$1,500 non-refundable application fee⁵. Licenses are categorized by size into two groups⁶: 1) 10 acres or less and 2) more than 10 acres.

The New Cemetery application must include:

- Name and address of the cemetery
- Name and address of the owner
- Name, address, and resume of the operator
- Name and address of each person who has an interest in the cemetery and their relationship to the owner
- A copy of the purchase agreement, if applicable
- Documentation supporting community need
- Physical layout of the cemetery
- Operating agreement
- Entity Documents, including the by-laws and articles of incorporation, organization, or association
- Partnership certificates
- Endowment and perpetual care trust fund agreement⁷
- Prepaid funeral and cemetery sales registration or application⁸, if applicable
- Prepaid escrow agreement, if applicable
- Entity documents from the Cemetery Corporations Act⁹

³ MCL 128.111

⁴ An office within LARA

⁵ *Cemetery Regulation Act*, MCL456.532

⁶ MCL 456.530

⁷ MCL 456.522

⁸ *Act 255 of 1986, The Prepaid Funeral and Cemetery Sales Act* sets administrative rules to regulate prepaid funeral and cemetery contract sales transactions. A prepaid contract is a contract requiring payment in advance for funeral or cemetery services or merchandise, physical delivery and retention of which would occur after death under a guaranteed price contract or a nonguaranteed price contract.

⁹ *Act 88 of 1875, Cemetery Corporations* MCL 456.16-456.17 requires groups that have incorporated to provide the Corporations, Securities and Commercial Licensing Bureau with a certificate of organization and a map of the proposed burial grounds,

- Proof of Health Department approval¹⁰, if applicable
- Copy of permit¹¹, if applicable

The commissioner will investigate all owners, directors, partners, members, etc. to determine their experience, financial security, responsibility, and stability, as well as, the source, nature, and the amount of funding needed¹². A person or group is ineligible to be a cemetery owner or have a controlling interest, if they were convicted of a felony or a misdemeanor involving fraud, theft, or dishonesty; submitted false information on the application; or fails the commissioner's investigation¹³. It is at the discretion of the commissioner to use arrests, bankruptcy filings, delinquent taxes, or any non-compliance with regulatory requirements of any kind in any state to evaluate an applicant's ability to establish and maintain a cemetery¹⁴.

A Prepaid Funeral and Cemetery Sales

The owner of the cemetery will also need to apply for a certificate of registration, which if approved is valid for 3 years from the cemetery commissioner for \$120¹⁵. This certificate allows a cemetery to accept payment in advance of someone's death for funeral or cemetery services and/or merchandise¹⁶.

A Prepaid Funeral and Cemetery Sales Registration Application Requires:

- Name and business address of the person registering
- The names and addresses of persons owning 10% or more interest
- The business address where books and records pertaining to prepaid contracts will be maintained for inspection by the department
- A list of the names and addresses of any escrow agents in which funds have or will be deposited¹⁷
- Copies of all escrow and trust fund agreements between the registrant and an escrow agent¹⁸
- A statement made under oath that the registrant has an agreement with each escrow agent

The Licensing Division may deny an application if the person was previously registered, and the registration was revoked or suspended within 2 years before the date of the current application; or the person was or is presently an owner with a substantial interest in an entity, partner, or employee of a person whose registration was revoked or suspended within 2 years before the

¹⁰ The Department of Licensing and Regulatory Affairs, Cemetery Regulation, General Rules R 456.1201

¹¹ Required under the *Natural Resources and Environmental Protection Act*, PA 451 of 1994 MCL 324.5542.

¹² *Cemetery Regulation Act*, MCL 456.528

¹³ *Cemetery Regulation Act*, MCL 456.533a

¹⁴ *Act 251 of 1968*, MCL 456.533a

¹⁵ *Prepaid Funeral and Cemetery Sales Act*, PA 255 of 1986, MCL 328.216

¹⁶ MCL 328.214 defines merchandise as cemetery vaults, other outside containers, grave memorials, caskets, catafalques, etc. It does not include land, mausoleums, or columbariums.

¹⁷ *Prepaid Funeral and Cemetery Sales Act*, MCL 328.216

¹⁸ MCL 328.217-.218 and MCL 328.222, describes rules and regulations a registrant and escrow agent must follow.

date of the current application and that person participated in or authorized misconduct that was the basis for revocation or suspension¹⁹. Ownership can also be denied if that person lacks good moral character²⁰, violated article 18 of the Occupational Code²¹ or the Cemetery Regulation Act. If denied, the applicant may ask for reconsideration of the decision at a hearing.

Endowment and Perpetual Care Trust Fund

Prior to approval, an applicant must establish an irrevocable Endowment of Perpetual Care Trust Fund²², with one or more regulated financial institution. This fund must be maintained throughout the entire ownership of the cemetery. *The Cemetery Regulation Act of 1968*, defines endowment and perpetual care as “all general work necessary to keep the cemetery property in presentable condition at all times,” including cutting the grass, sodding of graves, removal of shrubs and trees to assure access to burial sites, the maintenance or repair of any building, drives or walkways, etc. The Trust Fund must have at least \$50,000 in it before any sale of burial rights can be made²³. The commissioner will determine how much is deposited into the aforementioned accounts each month, which commonly is at least 15% of the previous month’s revenue²⁴. The income/interest from the perpetual care account cannot be “commingled” with any other money or trust accounts, nor can it be used for any other purpose, except for tending to the natural attrition of the cemetery over time.²⁵

Cemetery Corporations

Act 87 of 1855, Cemetery Corporations grants a group of 5 or more people the right to organize themselves into a cemetery corporation for the purposes of buying or leasing land in order to establish a small private cemetery or to sell burial plots to members of the public.²⁶ The land purchased or leased by an incorporated group for the purpose of building a cemetery, cannot be delinquent in taxes or special assessments²⁷, nor used for any other purpose, even after the corporation has disbanded or the lease has expired.

If members of a church decide to incorporate, pursuant to the *Cemetery Corporations Act*, the incorporated entity would be considered the owner of the cemetery, instead of the church. It isn’t clear if changing the status of ownership from a church to a corporation would alter its exemption from the regulations detailed in *Cemetery Regulation Act of 1968*.

¹⁹ MCL 328.216

²⁰ Good Moral Character is defined in PA 381 of 1974, MCL 338.41-.47

²¹ *The Occupational Code*, PA 299 of 1980, MCL 336.1801-.1812

²² *PA 251 of 1968*, MCL 456.536

²³ *Cemetery Corporations* MCL 456.536 (5)

²⁴ MCL 456.536 (6)

²⁵ MCL 456.536 (1)

²⁶ MCL 456.1

²⁷ *Cemetery Corporations*, PA 87 of 1855, MCL 456.2

The group of people that wishes to incorporate must have a meeting with the municipality that the proposed cemetery will be located in²⁸. If they are granted the right to incorporate, then they must elect a board of no less than 9 and no more than 12 trustees.²⁹ The members of the board of trustees can vote to make by-laws, rules, and regulations for the officers to follow in order to ensure proper operation of the corporation³⁰. The Board of Trustees must file with the cemetery commissioner and the clerk of the corporation maps that describe the specifics related to land, location, and layout of the cemetery³¹ for a non-refundable fee of \$50.

City Regulations

The City's Zoning Ordinance regulates the location and appearance of cemeteries within the city. These regulations detail which zoning districts the cemeteries may locate. Our Zoning Code states that a cemetery can only exist as a conditional-use in R1, R2, and R3 zoning districts or the owner would need to get legislative approval if its construction was a part of a planned development project³². Section 61-12-132 states that cemeteries that abuts or is across the street from R1, R2, and R3 Districts are subject to a 20 foot yard between street and burial plots, land must be landscaped, and any warehouses, mausoleums, crematories, etc. cannot be located within 150 feet from the nearest residential property line.

The Detroit Parks and Recreation Department handles the preservation of local public cemeteries that are owned by the city. Currently, individual owners of cemeteries set by-laws within the confines of state law that they've deemed necessary to keep their grounds clean and organized.

Conclusion

The most critical requirements for opening a cemetery are compliance with local zoning property-related regulations, and fulfilling the requirements contained in the *Cemetery Regulations Act*, which articulates that owner's level of experience and financial aptitude. The community's need for a cemetery of the type sought, must also be examined, as well as, its physical location within the community. Determining the location of a cemetery requires consideration of public welfare, the prosperity of the surrounding community, in addition to the number and the capacity of existing cemeteries. There's a perception that cemeteries lower the property value of surrounding homes and businesses. Therefore, taking into account the perspective of local communities and involving local community groups in the process is extremely important.

If we can be of any further assistance, please call upon us.

²⁸ MCL 456.6

²⁹ MCL 456.8

³⁰ MCL 456.15

³¹ MCL 456.17

³² Chapter 61 Zoning Ordinance, section 61-12-27