

STATE OF WISCONSIN
CEMETERY BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : CEMETERY BOARD
CEMETERY BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 17-050)

PROPOSED ORDER

An order of the Cemetery Board to renumber and amend CB 5.03 (3); to amend ch. CB 2 (title) and CB 2.01; and to create CB 2.05, 2.06, and ch. CB 6, relating to mausoleums and burial records.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Sections 157.12 (2) and 157.62 (5), Stats.

Statutory authority: Sections 157.12 (2) (a), 157.62 (5), and 440.905 (2), Stats.

Explanation of board authority: Section 157.12 (2) (a), Stats., requires the cemetery board to promulgate rules governing the location, material, and construction of mausoleums. Section 440.905 (2), Stats., grants the cemetery board rule-making authority and the authority to promulgate rules relating to the regulation of cemetery authorities, cemetery salespersons, and cemetery preneed sellers.

Related statute or rule: Sections SPS 361.30, 361.36 (1) (f), 361.41 (3), 361.50, and 362.3100, and chs. 157 and 440, Stats.

Plain language analysis:

The rule creates a cemetery burial record and provides cemetery board guidance for the oversight of mausoleum and public mausoleum construction and inspections.

Summary of, and comparison with, existing or proposed federal regulation:

This rule updates cemetery and mausoleum provisions according to 2015 Wisconsin Act 237 for mausoleum and public mausoleum construction standards.

Comparison with rules in adjacent states:

Illinois: In 2010 the state of Illinois passed the cemetery oversight act. This act included provisions guiding cemetery licensing, reporting, ethics, continuing education, and cemetery sales.

Iowa: All forms, certificates and reports pertaining to the registration of death events are the property of the Iowa regulatory agency and are required to be surrendered to the state registrar

upon demand. Under Iowa code 641- 97.17 and 641- 97.18 the funeral director is responsible for recording final disposition records.

Michigan: Cemeteries are required maintain accurate, complete, and legible records of any books, contracts, records, or documents pertaining to, prepared in, or generated by, the cemetery operation including, but not limited to, forms, reports, accounting records, ledgers, internal audit records, correspondence, and personnel records. All records are required to be maintained for at least 7 years from the date of record completion.

Minnesota: Cemeteries are not licensed by the state of Minnesota but are governed by local units of government.

Summary of factual data and analytical methodologies:

The cemetery board reviewed the rule and statutory requirements.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The rule was posted for public comment on the economic impact of the proposed rule, including how this proposed rule may affect businesses, local government units, and individuals for a period of 14 days.

Fiscal Estimate and Economic Impact Analysis:

This rule was posted for economic comments for 14 days and no comments were received. The rule does not have any fiscal or economic impact on specific businesses, business sectors, public utility rate payers, local governmental units or the state's economy as a whole.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Kirsten.Reader@Wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Greg DiMiceli, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-266-0955; email at DSPSAdminRules@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Greg DiMiceli, Rule Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before September 28, 2017, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Chapter CB 2 (title) is amended to read:

CHAPTER CB 2
FILING OF ANNUAL REPORTS AND MAINTAINING BURIAL RECORDS BY CEMETERY
AUTHORITIES AND PRENEED SELLERS.

SECTION 2. CB 2.01 is amended to read:

CB 2.01. Authority. This chapter is adopted pursuant to ss. 157.62 (2), (5), and (7), 157.63, 227.11 (2), 440.905, and 440.92 (6) (k), Stats.

SECTION 3. CB 2.015 is created to read:

CB 2.05. Definition. In this chapter, “cemetery authority” has the meaning given in 157.061 (2), Stats.

Note: Crematory authority is defined in s. 440.70 (9), Stats.

SECTION 4. CB 2.06 is created to read:

CB 2.06. Burial record. (1) A cemetery authority or licensee shall maintain a record for all human remains buried within a cemetery. This record shall include the following information:

- (a) The name of the deceased.
- (b) The last-known address of the deceased.
- (c) The date of birth of the deceased.
- (d) The date of death as listed on the disposition of human remains.
- (e) The date that the remains are placed in the grave, niche, or crypt.
- (f) The exact location in the cemetery where the human remains are buried or placed. The specific location shall correspond to the map or plat maintained by the cemetery authority or licensee.
- (g) The name of the person authorizing the burial and his or her relationship to the deceased.
- (h) The name of the funeral establishment, as defined in s. 445.01 (6), Stats.
- (i) The type of burial vault used, if any, including poured concrete, precast concrete, plastic, or polyurethane.
- (j) The type of the grave marker or monument, including granite, along with the marker style, including flush, upright, or slanted.

Note: The burial records listed in s. CB 2.05 (1) are different from the records that a cemetery authority is required to keep and maintain in accordance with s. 157.62 (4), Stats.

(2) A cemetery authority or licensee shall record burial information under sub. (1) no more than 10 business days following the burial. All burial records completed after the effective date of this section ... [LRB inserts date] shall be maintained either in an electronic format that is easily accessible for review or in a legibly written format.

(3) All burial records shall be maintained by the cemetery authority. Upon conveyance of a cemetery, burial records shall be transferred to the new cemetery authority who shall then maintain the transferred records.

SECTION 5. CB 5.03 (3) is renumbered CB 1.015 and amended to read:

CB 1.015. Definitions. As used in chs. CB 1 to 6, “~~Board~~ board” means the cemetery board.

SECTION 6. Chapter CB 6 is created to read:

CHAPTER CB 6 MAUSOLEUMS

CB 6.01 Authority. The rules in this chapter are adopted pursuant to ss. 157.12 (2) (a), 157.62 (5), 227.11 (2), and 440.905 (2), Stats.

CB 6.02 Definitions. In this chapter:

(1) “Mausoleum” has the meaning given in s. 157.061 (9), Stats.

(2) “Public Mausoleum” has the meaning given in s. 157.061 (14), Stats.

Note: Columbarium is defined in s. 440.70 (4), Stats.

CB 6.03 Mausoleum plan review. (1) Prior to the construction or alteration of any mausoleum or conversion of a building or other structure to a mausoleum the board or its designee shall review, in accordance with the provisions in chs. SPS 361 to 366, the plans for mausoleum construction, alteration, or building conversion.

(2) The construction, alteration, or building conversion of any mausoleum may not occur prior to written approval of the plans by the board or its designee in accordance chs. SPS 361 to 366 and s. 157.12 (2) (a), Stats.

(3) Plans shall expire 3 years after the date indicated on the approved building plans of the building shell if not closed within those 3 years.

CB 6.04 Revision to approved plans. No modifications to the approved plans or amendments to the plan specifications beyond cosmetic changes may be made without prior written approval from the board or its designee in accordance with chs. SPS 361 to 366 and s. 157.12 (2) (a), Stats.

CB 6.05. Supervision of construction. (1) Construction of any public mausoleum shall be supervised by the board or its designee in accordance with chs. SPS 361 to 366 and s. 157.12 (2) (b), Stats.

(2) The supervising professional shall provide a written compliance statement in accordance with chs. SPS 361 to 366 within 30 days following completion of the construction, alteration, or conversion of a public mausoleum.

CB 6.06 Inspection. The board, or its designee, shall inspect the construction of any public mausoleum in accordance chs. SPS 361 to 366 and s. 157.12 (2) (b), Stats., to ascertain whether the construction, alteration, or building conversion complies with approved plans.

CB 6.07 Reinspection. (1) If the board or its designee determines that, except for certain minor defects, the construction, alteration, or conversion complies with the approved plans, the board or its designee may provide the cemetery authority with a written progress report that is contingent on the correction of those minor defects.

(2) If a cemetery authority with a progress report notifies the board or its designee in writing before the expiration date of the temporary certification that the defects in the construction, alteration, or conversion of the public mausoleum have been corrected, the board or its designee shall, within 30 days after receiving the notice, reinspect the public mausoleum and provide the cemetery authority with a final inspection report as to whether the construction, alteration, or conversion complies with the approved plans.

Note. See s. 440.70, Stats. for the definition of ‘Columbarium’” or “see subch. VII of ch. 440, Stats. for information regarding columbaria and matters relating to Crematory Authorities.”

CB 6.08 Mausoleum sales. No person may sell a mausoleum space, except an undeveloped space that is sold in accordance with s. 440.92, Stats., or bury human remains in the public mausoleum until all inspection defects are corrected and the board or its designee reinspects the public mausoleum and provides the cemetery authority with a final inspection report that indicates the construction, alteration, or conversion complies with the approved plans.

CB 6.09 Mausoleum location. The board, or its designee, shall review the location of the mausoleum to ensure the mausoleum is located in accordance with s. 157.065 (2), Stats.

CB 6.10. Compliance requirements. In addition to board construction requirements, mausoleum construction shall follow the requirements of s. SPS 362.3100.

CB 6.11. Mausoleum and public mausoleum construction material. A mausoleum or public mausoleum shall be constructed to last as long as possible, taking into consideration the technology and economics applicable to mausoleum construction at the time of construction with construction materials reviewed by the board, or its designee, in accordance with chs. SPS 361-366 and s. 157.12 (2) (d) Stats.

CB 6.12. Mausoleum and public mausoleum fees. The board or its designee may charge a reasonable fee to the cemetery authority for each review and inspection provided under this chapter. Fees for reviews and inspections shall be submitted in accordance with ch. SPS 302.

CB 6.13. Initial applicability. This chapter first applies to construction, alteration, or conversion of mausoleums and public mausoleums initiated after the effective date of this chapter ... [LRB inserts date].

CB 6.14. Reports. The board may request reports from its designee on any activity it delegates in this section.

SECTION 7. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)

This Proposed Order of the Cemetery Board is approved for submission to the Governor and Legislature.

Dated _____

Agency _____

Chairman,
Cemetery Board