

Clearinghouse Rule 19-150

STATE OF WISCONSIN
CEMETERY BOARD

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : CEMETERY BOARD
CEMETERY BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the Cemetery Board to amend CB 6.07 (1) and (2) and 6.08; and to create CB 6.085 relating to mausoleums.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Sections 157.12 (2) (b) and (3) (a) 3, Stats.

Statutory authority: Sections 157.12 (3) (a) 3. and 440.905 (2), Stats.

Explanation of agency authority:

Section 440.905 (2), Stats., provides “[t]he board has rule-making authority and may promulgate rules relating to the regulation of cemetery authorities, cemetery salespersons, and cemetery preneed sellers...”

Section 157.12 (3) (a) 3., Stats., provides “...The municipality in which mausoleum is located may, by ordinance, require a larger fund, but only if the cemetery board notifies the municipality in writing that the cemetery board approves of the requirement. The cemetery board may promulgate rules establishing uniform standards for approvals under this subdivision.”

Related statute or rule: None.

Plain language analysis: This rule project will amend ss. CB 6.07 and 6.08 to revise references to “progress reports” to instead reference “temporary certification” in order to be consistent with the terminology used in statute. Section CB 6.07 will also be revised to clarify that in order to obtain temporary certification status, the minor defects in question must not be structural defects.

Further, s. CB 6.08 will also be revised to bring the rule into conformity with state statute and allow for the sale of mausoleum space and the burial of human remains while a mausoleum has temporary certification status.

Finally, the project creates a uniform procedure for municipalities to request, and criteria for the Cemetery Board to use when deciding whether or not to approve an ordinance under s. 157.12 (3) (a) 3., Stats., requiring a larger mausoleum care fund than what is required by s. 157.12 (3) (a) 1. and 2., Stats.

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

The federal government does not regulate mausoleum construction or care funds.

Summary of public comments received on statement of scope and a description of how and to what extent those comments and feedback were taken into account in drafting the proposed rule:

The Cemetery Board held a preliminary hearing on the statement of scope for this rule at its August 20, 2019 meeting. No comments were received.

Comparison with rules in adjacent states:

Illinois: Illinois requires that 50% of the proceeds of sales of undeveloped spaces, be deposited into a preneed trust fund (815 ILCS 390/15 (a)). Sellers of undeveloped space are required to maintain temporary burial facilities for those who die prior to completion of the space (Id. at (d)).

Illinois law does not require the establishment of care funds for mausoleums. However, if a cemetery authority requires the establishment of a care fund, or a deposit to an existing care fund as a condition of the sale of a plot, the cemetery authority is required by law to deposit certain percentages of the sale into the care fund:

1. For interment rights, \$1 per square foot of the space sold or 15% of the sales price or imputed value, whichever is the greater, with a minimum of \$25 for each individual interment right.
2. For entombment rights, not less than 10% of the sales price or imputed value with a minimum of \$25 for each individual entombment right.
3. For inurnment rights, not less than 10% of the sales price or imputed value with a minimum of \$15 for each individual inurnment right.
4. For any transfer of interment rights, entombment rights, or inurnment rights recorded in the records of the cemetery authority, excepting only transfers between members of the immediate family of the transferor, a minimum of \$25 for each such right transferred. For the purposes of this paragraph “immediate family of the transferor” means the spouse, parents, grandparents, children, grandchildren, and siblings of the transferor.
5. Upon an interment, entombment, or inurnment in a grave, crypt, or niche in which rights of interment, entombment, or inurnment were originally acquired from a cemetery authority prior to January 1, 1948, a minimum of \$25 for each such right exercised.
6. For the special care of any lot, grave, crypt, or niche or of a family mausoleum, memorial, marker, or monument, the full amount received (760 ILCS 100/4).

Illinois does not appear to provide municipalities with the option of requiring greater deposits.

Iowa: Iowa law requires that an amount equal to or greater than fifty dollars or twenty percent of the gross selling price received by the cemetery for each sale of interment rights, whichever is greater, must be deposited into a care fund for the cemetery's perpetual care (IA Code s. 523I.807 (1)). Iowa does not appear to specifically provide that a municipality may require a greater deposit. Iowa does not allow for the sale of interment rights in a mausoleum that will be completed in the future unless the commissioner has approved the cemetery authority to make sales. The cemetery authority is required to submit a notification to the cemetery commissioner for approval including the following information:

- a. A description of the new facility or the proposed expansion, including a description of the interment rights to be offered to prospective purchasers.
- b. A statement of the financial resources available for the project.
- c. A copy of the proposed interment rights agreement to be used, which shall include the following:
 - (1) That purchase payments will be held in trust in accordance with the requirements of chapter 523A until construction of the mausoleum or columbarium is complete.
 - (2) That the purchaser may request a refund of the purchase amount, if construction does not begin within five years of the purchaser's first payment.
 - (3) That the new facility will operate as a perpetual care cemetery in compliance with this chapter, even if the facility is located at a nonperpetual care cemetery.
 - (4) That the purchaser will receive an ownership certificate upon payment in full or, if later, when construction is complete.

(IA Code s. 523I.314).

Michigan: Preconstruction sales of crypts or niches in a mausoleum or columbarium are prohibited unless the cemetery authority does one of the following:

- (a) Agrees to complete the mausoleum or columbarium within 4 years after the date of the first sale of an entombment or inurnment right in the proposed mausoleum or columbarium or, if construction is not completed within that time and upon the request of the purchaser, agrees to offer to the purchaser a refund of 100% of the purchase price with interest calculated at the rate of 4% per annum.
- (b) Agrees that if the person for whom the entombment or inurnment right in the proposed mausoleum or columbarium dies before completion of the mausoleum or columbarium, an alternative disposition of the remains shall be provided until completion of the mausoleum or columbarium or until a refund is made of 100% of the purchase price with interest calculated at the rate of 4% per annum. (MCL s. 456.536a).

Michigan law requires the establishment of a perpetual care fund of \$50,000 before any sales may be made. Each month thereafter, the cemetery must deposit not less than 15% of its proceeds received from the sales of burial rights, entombment rights, or

columbarium rights (MCL 456.536 (5) and (6)). Michigan does not appear to have a specific provision allowing individual municipalities to increase the required deposit percentage.

Minnesota: Cemetery authorities may sell burial space in a mausoleum or columbarium prior to completion if they have obtained a performance bond sufficient to cover all construction costs associated with building the mausoleum or columbarium at the time of sale (Minn. Stats. s. 306.90). Minnesota law requires that cemetery authorities deposit 10% of the proceeds of all sales of mausoleum burial spaces into the cemetery's permanent care and improvement fund. Minnesota does not appear to have a specific provision allowing individual municipalities to increase the required deposit percentage.

Summary of factual data and analytical methodologies:

The cemetery board reviewed its rules in advance of its report due to the legislature under s. 227.29, Stats. The changes in this rule project were deemed necessary to bring the rules into compliance with state law, and to enhance the clarity of the rules and provide better guidance to stakeholders.

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

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

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis will be attached.

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 Daniel.Hereh@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Jon Derenne, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, 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 Jon Derenne, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before the hearing scheduled for 9:30 AM on January 21, 2020 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. CB 6.07 (1) and (2) are amended to read:

CB 6.07 (1) If the board or its designee determines that, except for certain minor non-structural 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~~ temporary certification that is contingent on the correction of those minor defects.

(2) If a cemetery authority with a ~~progress report~~ temporary certification 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.

SECTION 2. CB 6.08 is amended to read:

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 either the board has issued a temporary certification that the mausoleum contains only minor, non-structural defects, or 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.

SECTION 3. CB 6.085 is created to read:

CB 6.085 Municipal requests for larger mausoleum care funds. A municipality may require by ordinance, with the written permission of the board, that cemetery authorities within its jurisdiction maintain a larger mausoleum care fund than what is required under s. 157.12 (3) (a) 1. and 2, Stats. The board may issue a written approval of such an ordinance if the municipality submits a request containing the following:

- (1) A copy of the proposed ordinance.
- (2) A statement demonstrating a need for deviating from the statutory requirements.
- (3) The requirements under the ordinance are reasonable as determined by the board.

SECTION 4. 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)

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		2. Date November 21, 2019	
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) CB 6			
4. Subject Mausoleums			
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S		6. Chapter 20, Stats. Appropriations Affected	
7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget			
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)			
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0			
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
11. Policy Problem Addressed by the Rule This rule project will amend ss. CB 6.07 and 6.08 to revise references to "progress reports" to instead reference "temporary certification" in order to be consistent with the terminology used in statute. Section CB 6.07 will also be revised to clarify that in order to obtain temporary certification status, the minor defects in question must not be structural defects. Further, s. CB 6.08 will also be revised to bring the rule into conformity with state statute and allow for the sale of mausoleum space and the burial of human remains while a mausoleum has temporary certification status. Finally, the project creates a uniform procedure for municipalities to request, and criteria for the Cemetery Board to use when deciding whether or not to approve an ordinance under s. 157.12 (3) (a) 3., Stats., requiring a larger mausoleum care fund than what is required by s. 157.12 (3) (a) 1. and 2., Stats.			
12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. The proposed rule was posted on the Department of Safety and Professional Services's website for 14 days in order to solicit comments from businesses, representative associations, local governmental units, and individuals that may be affected by the rule. No comments were received.			
13. Identify the Local Governmental Units that Participated in the Development of this EIA. No local governmental units participated in the development of this EIA.			
14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)			

This proposed rule will not have a significant impact on specific businesses, business sectors, public utility rate payers, local governmental units, or the state's economy as a whole

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

The benefits of implementing the rule will be to allow for the sale of mausoleum space and the burial of human remains while a mausoleum has temporary certification status, as anticipated by statute. The rule will also provide greater clarity for cemetery authorities constructing mausoleums as to what a minor defect is. Finally, the rule will provide criteria for approval of requests from municipalities seeking to require a greater care fund for mausoleums than what is required under statute.

16. Long Range Implications of Implementing the Rule

The long range implication of implementing the rule is that the rule will be brought into conformity with statutory requirements and will give stakeholders greater clarity as to what is allowable under the law.

17. Compare With Approaches Being Used by Federal Government

The federal government does not regulate the construction of mausoleums or the maintenance of mausoleum care funds.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois: Illinois requires that 50% of the proceeds of sales of undeveloped spaces, be deposited into a preneed trust fund (815 ILCS 390/15 (a)). Sellers of undeveloped space are required to maintain temporary burial facilities for those who die prior to completion of the space (Id. at (d)).

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4. For any transfer of interment rights, entombment rights, or inurnment rights recorded in the records of the cemetery authority, excepting only transfers between members of the immediate family of the transferor, a minimum of \$25 for each such right transferred. For the purposes of this paragraph “immediate family of the transferor” means the spouse, parents, grandparents, children, grandchildren, and siblings of the transferor.
5. Upon an interment, entombment, or inurnment in a grave, crypt, or niche in which rights of interment, entombment, or inurnment were originally acquired from a cemetery authority prior to January 1, 1948, a minimum of \$25 for each such right exercised.
6. For the special care of any lot, grave, crypt, or niche or of a family mausoleum, memorial, marker, or monument, the full amount received (760 ILCS 100/4).

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- a. A description of the new facility or the proposed expansion, including a description of the interment rights to be offered to prospective purchasers.
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ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

- b. A statement of the financial resources available for the project.
- c. A copy of the proposed interment rights agreement to be used, which shall include the following:
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 - (2) That the purchaser may request a refund of the purchase amount, if construction does not begin within five years of the purchaser's first payment.
 - (3) That the new facility will operate as a perpetual care cemetery in compliance with this chapter, even if the facility is located at a nonperpetual care cemetery.
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(b) Agrees that if the person for whom the entombment or inurnment right in the proposed mausoleum or columbarium dies before completion of the mausoleum or columbarium, an alternative disposition of the remains shall be provided until completion of the mausoleum or columbarium or until a refund is made of 100% of the purchase price with interest calculated at the rate of 4% per annum. (MCL s. 456.536a).

Michigan law requires the establishment of a perpetual care fund of \$50,000 before any sales may be made. Each month thereafter, the cemetery must deposit not less than 15% of its proceeds received from the sales of burial rights, entombment rights, or columbarium rights (MCL 456.536 (5) and (6)). Michigan does not appear to have a specific provision allowing individual municipalities to increase the required deposit percentage.

Minnesota: Cemetery authorities may sell burial space in a mausoleum or columbarium prior to completion if they have obtained a performance bond sufficient to cover all construction costs associated with building the mausoleum or columbarium at the time of sale (Minn. Stats. s. 306.90). Minnesota law requires that cemetery authorities deposit 10% of the proceeds of all sales of mausoleum burial spaces into the cemetery's permanent care and improvement fund. Minnesota does not appear to have a specific provision allowing individual municipalities to increase the required deposit percentage.

19. Contact Name

Jon Derenne, Administrative Rules Coordinator

20. Contact Phone Number

(608) 266-0955

This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements

Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

Yes No
