

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 19-150)

PROPOSED ORDER

An order of the Cemetery Board to amend CB 6.07 (1) and (2) and 6.08; and to create CB 6.02 (3) and 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), Stats.

Statutory authority: Sections 157.12 (2) (a), 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 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 fifty percent 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 fifteen percent 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 ten percent of the sales price or imputed value with a minimum of \$25 for each individual entombment right.
3. For inurnment rights, not less than ten percent 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 \$50 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. Or,
- (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 one hundred percent 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

fifteen percent 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 ten percent 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 pursuant to s. 227.29, Stats. The changes in this rule project were deemed necessary to bring the rules into compliance with state law; to enhance the clarity of the rules; and to 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 was 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. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis are 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.Hereth@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 6.02 (3) is created to read:

CB 6.02 (3) “Temporary certification” means a contingent approval issued by the board where, following an initial inspection, the board determines that the mausoleum only contains minor, non-structural defects; and is valid for a period determined by the board, but not to exceed six months.

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 approval 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:

- (1) The municipality submits a request to the board containing the following:
 - (a) A copy of the proposed ordinance.
 - (b) A statement demonstrating a need for an ordinance that deviates from the statutory requirements.
 - (c) An affidavit from the municipality certifying that it has consulted with the cemetery authorities in its jurisdiction who may be impacted by the proposed ordinance.
- (2) 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)

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

Dated _____

Chair