

Township Cemetery Regulatory Ordinance

**BROOKS TOWNSHIP
NEWAYGO COUNTY, MICHIGAN**

(Ordinance No. 2023-100)

**AN ORDINANCE TO PROTECT THE PUBLIC HEALTH,
SAFETY AND GENERAL WELFARE BY REGULATING NEW
AND EXPANDING CEMETERIES; TO REGULATE THE
SAME; AND TO PROVIDE PENALTIES FOR THE VIOLATION
OF SAID ORDINANCE.**

THE TOWNSHIP OF BROOKS (“Township”), COUNTY OF NEWAYGO, MICHIGAN,
ORDAINS:

Section 1. Title.

This Ordinance shall be known and may be cited as the “Brooks Township Cemetery
Regulatory Ordinance.”

Section 2. Purpose and Intent.

The Township Board finds that this Ordinance is essential for the health, safety and welfare of Brooks Township property owners, residents and visitors. With regard to cemeteries, in the past, cemeteries elsewhere have taken up significant amounts of sometimes otherwise productive land. Cemeteries can have negative impacts upon adjoining and nearby residential properties, including negatively affecting property values. Cemetery landscaping, grass cutting, monument repair and upkeep costs have increased dramatically over time. Increasing vandalism has been a problem. The problems associated with abandoned or “orphan” cemeteries has increased throughout Michigan, and citizens often look to the local municipal government (townships, cities or villages) to take over abandoned or orphan cemeteries. There currently are no known modern era cemeteries in Brooks Township. The Township Board also finds that there is sufficient space and vacant plots available in existing cemeteries within a 50-mile radius of Brooks Township to satisfy any demand

for burials. Furthermore, the concept of a private cemetery of any size and scope is particularly of concern to the Township Board given the issues of long-term sustainability, stability and viability, potential under-funding, governance and upkeep matters. As for green cemeteries, they are a relatively new and novel concept in Michigan (and nation-wide) in the modern era and particularly in West Michigan. The Township Board is concerned about negative impacts on groundwater should a green cemetery with hundreds (or even thousands) of human remains occur. There appears to be very little regulation of or oversight involving private green cemeteries at either the state or county levels in Michigan. It is not clear who (other than the Township) would be responsible for managing, closing or relocating a private green cemetery should it fail. Under MCL 128.31 *et seq.*, should a private cemetery fail, the Township may have to take over or close the cemetery and the Township would likely be responsible for the costs and expenses thereof. Given tight Township budgets, funds for such purpose may not be available. Therefore, there are many uncertainties and potentially negative impacts regarding private cemeteries, including private green cemeteries. Accordingly, the Township Board believes that it is necessary to carefully draft, enact and enforce new Township ordinance provisions in order to allow for new cemeteries under regulated conditions.

Section 3. Definition.

For purposes of this Ordinance, the following word shall mean as follows:

Cemetery – Shall mean a burial ground or graveyard for dead people or pets, or a place where dead people or cremains are buried or interred. A cemetery can also be a designated place or area where the remains or bodies of people or pets who have died are buried or laid to rest. A cemetery shall include, but not necessarily be limited to, any conventional cemetery, green cemetery, conservation cemetery, burial forest or forest cemetery. This definition shall not include the noncommercial burial of a dead pet animal owned by the owner(s) of the property involved.

Section 4 – Cemetery permit required for all new and expanded cemeteries.

- (a) No new cemetery shall be created, installed, constructed or instituted and no existing cemetery shall be expanded or enlarged unless a written cemetery permit has first been approved and issued by the Brooks Township Board under this Ordinance.
- (b) An application for a cemetery permit shall contain all of the following:
 - (i) A completed application form provided by the Township.
 - (ii) A plot plan of the cemetery and its layout.
 - (iii) Any applicable fee(s).
 - (iv) The name of a contact person (including that person's telephone number and email address) shall be kept on file at all times (and be current) with the Township in case of an emergency or problem involving the cemetery.
 - (v) A written security plan indicating how the cemetery will be secured if no agent of the cemetery is present or overnight to protect the cemetery from trespassers, vandals and similar problems.
 - (vi) The Township can require the filing with the Township of any additional information or data by the applicant if deemed reasonably necessary by the Township Board (including, but not limited to, a profession hydrology/groundwater study, a traffic study, a market impact study and other studies or reports regarding the likely impacts of the proposed cemetery or cemetery expansion).
- (c) A complete application (together with all required materials) and any fee or fees set by the Township Board from time-to-time shall be filed with the Township Clerk.

- (d) The Township Board shall either approve, deny or approve with conditions a cemetery permit request.
- (e) Prior to the Township Board making a final decision on a cemetery permit request, the Township Board shall hold a public hearing. Notice of the public hearing shall appear in the local newspaper at least fifteen (15) days before the public hearing date and notice of the proposed hearing shall also be mailed to the owners of all parcels and lots within 300 feet of the parcel or lot on which the new cemetery or cemetery expansion will be located.
- (f) In determining whether or not to approve the cemetery permit request, the Township Board shall consider all of the following standards:
 - (i) Whether the proposed cemetery or cemetery expansion will comply with the Brooks Township Zoning Ordinance and all applicable Township ordinances and codes, state laws, county regulations and any federal statutes or regulations.
 - (ii) Will the proposed cemetery or cemetery expansion have unreasonable or negative impacts or consequences on any of the lands or residents located within 3,000 feet of the border of the parcel or lot on which the proposed cemetery or cemetery expansion will be located.
 - (iii) Whether there is a reasonable need for additional cemetery spaces within Brooks Township and in the specific area involved.
 - (iv) Whether the cemetery or expanded cemetery will change the essential nature and character of the neighborhood and surrounding area.
 - (v) Will the proposed financial structure, makeup and status of the cemetery

ensure the long-term viability and perpetual nature of the cemetery?

Section 5 – Suspension or revocation of a Township cemetery permit.

The Township Board may temporarily suspend or revoke the cemetery permit for a cemetery within Brooks Township if any of the following is applicable:

- (a) The cemetery is in substantial violation of either the cemetery permit or a Township ordinance, state law, county regulation or federal law or regulation.
- (b) The cemetery has not been maintained or kept in a reasonable, safe or sanitary fashion, condition or state.
- (c) The cemetery is causing substantial harm to or negative impacts on the adjoining or nearby properties.

Section 6. Regulations and requirements.

- (a) No new cemetery shall be installed, constructed, commenced or initiated and no existing cemetery shall be expanded or extended unless all of the requirements of Subsection (b) below will be met.
- (b) Every new cemetery and cemetery expansion (and the lot or parcel on which the cemetery or expansion will be located) shall:
 - (i) Be approved by the local health department and to the extent required by law.
 - (ii) The lot or parcel on which the cemetery is located shall not be located within 1,500 feet of a private water well or 3,000 feet of a public or government water well. Nor shall a cemetery or cemetery expansion be located within a wellhead protection area, water well isolation area or required well setback area.

- (iii) The lot or parcel on which the cemetery is located shall not be located within 2,000 feet of a stream, river, creek or lake.
- (iv) A 4-foot tall steel woven or farmer's fence shall be installed and maintained along all boundaries of the cemetery lot or parcel (and along the public road frontage).
- (v) No other use shall occur on the new cemetery or expanded cemetery parcel or lot except for cemetery uses and activities.
- (vi) Have at least one entrance/exit on a paved year-around county paved public road.
- (vii) Be located at least 2,000 feet from an existing residential dwelling.
- (viii) Be located on a lot or parcel at least 40 acres in size.
- (c) The Township has no duty or legal obligation to take over or assume ownership, control, operation or maintenance of a cemetery should it fail or be abandoned.
- (d) The applicant shall post, with the Township, an irrevocable permanent bond, letter of credit or similar monetary security that is acceptable to the Township of at least \$1,000,000 (or greater) based on an estimate for closing the cemetery and moving the bodies if ultimately required, adjusted for inflation every ten years (via the federal consumer price index or successor index). The beneficiaries would be the Township and the State of Michigan.
- (e) If a cement vault is not used, an uncremated body must be buried at least six (6) feet below the natural surface of the ground.

Section 7. Financial ability and sustainability.

- (a) No new cemetery or cemetery expansion or extension shall be approved by the

Township Board and issued a cemetery permit unless the applicant can demonstrate to the reasonable satisfaction of the Township Board that the applicant has sufficient financial resources to develop, operate and sustain a new cemetery or expanded or extended cemetery and also to be able to fully comply with not only its cemetery permit, but also all applicable Township ordinances, state laws, county regulations and state and federal laws.

- (b) The applicant must demonstrate to the reasonable satisfaction of the Township Board that the applicant (and its successors) will be able to maintain, operate and sustain the new cemetery or expanded or extended cemetery for at least 50 years into the future.

Section 8. Inspections.

The Township shall have the right to inspect every cemetery within the Township every three (3) years, beginning in the calendar year commencing on the first of January following the enactment of this Ordinance.

Section 9. Perpetual Care Cemetery Fund.

Prior to the construction, installation or use of a new cemetery approved by the Township Board, the applicant shall establish a perpetual care cemetery fund with an insured bank or other financial institution approved by the Township to ensure that the cemetery is always kept in good condition, maintenance and repair and to provide funds to close the cemetery and relocate buried bodies and other cemetery effects elsewhere should any of that ever prove necessary. The amount of funds in such perpetual care cemetery fund shall always be sufficient to accomplish that goal. For each deceased person (or their remains) buried in the cemetery, the sum of at least \$1,000 shall be paid to the perpetual care cemetery fund before burial (adjusted every five (5) years for inflation

pursuant to the federal Consumer Price Index, or equivalent index).

Section 10. Disclosure Statements; Deed Restrictions.

The following shall apply to private cemeteries:

- (a) Prior to entering into any agreement, contract or other arrangement for the burial of the body of a specific person being interred in the cemetery, the known family members, executor or agent of the deceased shall be provided with a written disclosure statement which, at a minimum, contains all the following:
 - A statement indicating that the Township is not required to take over, assume any responsibility for, close or move any of the bodies in the cemetery should the cemetery be abandoned, closed or pursuant to any similar or other event.
 - A statement that the cemetery is private and any burial is at the sole risk of the family, executor or agent of the deceased.
- (b) The property comprising the cemetery shall be subject to a permanent and binding deed restriction/restrictive covenant document recorded with the Newaygo County Register of Deeds that states at a minimum as follows:
 - The property is a cemetery, and non-cemetery uses thereon are likely prohibited.
 - A statement that the cemetery is private and any burial is at the sole risk of the family, executor or agent of the deceased.

Section 11. Penalties.

A violation of this Ordinance constitutes a municipal civil infraction. Any person who violates, disobeys, omits, neglects or refuses to comply with any provision of this Ordinance, or

any cemetery permit or approval issued hereunder, or any amendment thereof, or any person who knowingly or intentionally aids or abets another person in violation of this Ordinance, shall be in violation of this Ordinance and shall be responsible for a civil infraction. The civil fine for a municipal civil infraction shall be not less than one hundred dollars (\$100) for the first offense and not less than two hundred dollars (\$200) for subsequent offenses, in the discretion of the court, in addition to all other costs, damages, expenses and remedies provided by law. For purposes of this section, “subsequent offense” means a violation of the provisions of this Ordinance committed by the same person within twelve (12) months of a previous violation of the same provision of this Ordinance or similar provision of this Ordinance for which said person admitted responsibility or was adjudged to be responsible. Each day during which any violation continues shall be deemed a separate offense. A violation of this Ordinance is also a nuisance *per se*. In addition to or in lieu of issuing a municipal civil infraction, the Township may pursue a declaratory judgment, nuisance or abatement lawsuit regarding or to abate any violation of this Ordinance in the Newaygo County Circuit Court or successor court.

Section 12. Township Officials Who Can Enforce this Ordinance.

Unless otherwise specified by the Township Board by Resolution, the following officials or officers shall have the authority to enforce this Ordinance and to issue municipal civil infraction citations/tickets pursuant to this Ordinance:

- Township Supervisor
- Township Clerk
- Township Zoning Administrator
- Township Ordinance Enforcement Officer
- Any deputy of the Newaygo County Sheriff’s department
- Any State Police officer

Section 13. Severability.

The provisions of this Ordinance are hereby declared to be severable and should any provision, section or part thereof be declared to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall only affect the particular provision, section or part thereof involved in such decision and shall not affect or invalidate the remainder of this Ordinance, which shall continue in full force and effect.

Section 14. Applicability.

This Ordinance shall apply only if a cemetery is otherwise lawful and not prohibited by a valid Brooks Township ordinance or ordinance provision. If a cemetery is illegal or unlawful under a valid Brooks Township ordinance or ordinance provision, this Ordinance cannot be utilized to make an otherwise unlawful or illegal cemetery lawful or able to be created and used.

Section 15. Effective Date.

This Ordinance shall become effective upon the expiration of thirty (30) days after a copy of this Ordinance (or a summary thereof) appears in the newspaper.

On January 21, 2025, at the Brooks Township Hall at a regular meeting beginning at 7:00 p.m., the above Ordinance was offered for adoption by Township Board Member Nelson and was seconded by Township Board Member Badgero, the vote being as follows:

YEAS: Nelson, Badgero, Hummel, Schultz

NAYS: _____

ABSENT/ABSTAIN: Miller

ORDINANCE DECLARED ADOPTED.

CERTIFICATION

I hereby declare that the above is a true copy of an ordinance adopted by the Brooks Township Board at the time, place and date specified above pursuant to the required statutory procedures.

Respectfully submitted,

By: Jennifer Badgero
Brooks Township Clerk