

ISSUE PAPER SERIES

## Abandoned Cemeteries and Municipal Responsibilities

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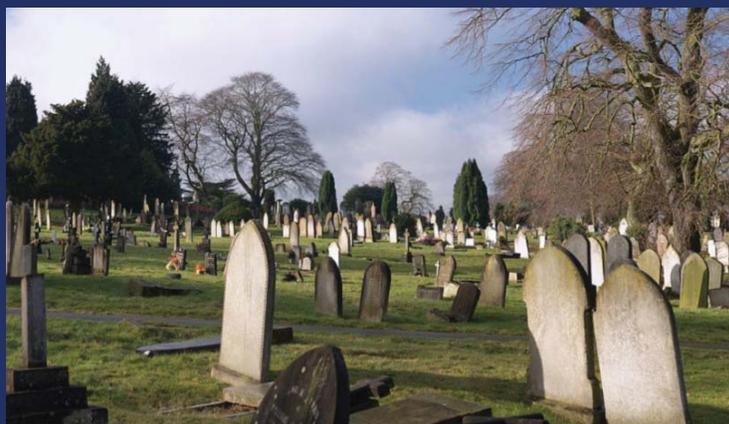


NEW YORK STATE TUG HILL COMMISSION

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This paper was prepared in cooperation with David Fleming, Jr., Governmental Relations, Featherstonhaugh, Wiley & Clyne, LLP.

The Tug Hill Commission Technical and Issue Paper Series are designed to help local officials and citizens in the Tug Hill region and other rural parts of New York State. The Technical Paper Series provides guidance on procedures based on questions frequently received by the Commission. The Issue Paper Series provides background on key issues facing the region without taking advocacy positions. Other papers in each series are available from the Tug Hill Commission. Please call us or visit our website for more information.



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This issue paper borrows heavily from presentations and material produced by David Fleming, Jr., Chief Operating Officer of the Albany law firm Featherstonhaugh, Wiley & Clyne, LLP. David has served eight terms as a town supervisor, one term as a deputy supervisor, and is the cemeterian responsible for three formally abandoned town cemeteries. He has provided representation for cemeteries and towns for twenty-eight years and has served as a consultant to some of New York State’s smallest cemeteries as well as some of the nation’s most famous burial grounds. He was also tasked with managing the town takeover of the largest cemetery abandonment in state history, resulting in nearly a \$2.5 million restoration of a cemetery operation before it was assumed by town government. His work has involved nearly \$100 million in various cemetery projects and related development. During the pandemic of 2020, he was an emergency management resource to state and national organizations in death care planning and response. He has been a cemetery and abandonment consultant for both local governments and state representatives, is knowledgeable about historic preservation and restoration, and is unapologetic about his belief in the importance of preserving the past for future generations.

## Introduction

There are estimated to be approximately 6,000 cemeteries of every type and size in New York State. In 2017, 1,745 of those cemeteries were regulated non-profit cemeteries. By January 2023, that number had fallen to 1,686. The remainder of the cemeteries are a combination of municipal, religious, family, and private cemeteries.

It is estimated that since 1990, more than 220 regulated non-profit cemeteries have failed. The number of abandonments to towns is predicted to significantly increase in the years ahead. Abandoned public cemeteries become the responsibility of the town in which they are located. Taking over an abandoned cemetery is often a confusing and worrisome issue for a town.

This paper explores the issues towns often face regarding abandoned cemeteries, and information on other burial and zoning considerations falling under municipal jurisdiction.

## What is the New York State Cemetery Board?

All cemeteries in New York are required to be non-profit entities. Public cemeteries in New York State are regulated by the New York State Cemetery Board and the Division of Cemeteries within the Department of State. The New York State Cemetery Board and the current statutory and regulatory scheme for cemeteries was created following numerous scandals and public outrage over a 1949 report of the NYS Attorney General that highlighted abuses in the death care industry. Pursuant to NYS Not-for-Profit Corporation Law § 1504(a), the Cemetery Board is comprised of the Secretary of State, the Attorney General, and the Commissioner of Health, or their designees. The Cemetery Board and its administrative arm, the Division of Cemeteries within the Department of State, regulate not-for-profit "cemetery corporations" formed under NYS Not-for-Profit Corporation Law Article 15 or the former Membership Corporations Law. This legal scheme requires all cemeteries in New York to be non-profit entities. They are also considered quasi-government entities because of their unique public purpose.

Questions specifically regarding cemeteries within the Division of Cemeteries jurisdiction should be addressed to that office: New York State Department of State, Division of Cemeteries, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001, (518) 474-6226, [dos.ny.gov/cemeteries](https://dos.ny.gov/cemeteries).

Listings of state regulated cemeteries may be found here: [Cemetery List - Webpage 2018.05.16 Final.xlsx \(ny.gov\)](#).

## Three Classes of Cemeteries Recognized by NYS Town Law § 291

The town board is under a duty to care for most cemeteries located in the town except those presently controlled by an existing board or corporate body (1967 Opinion of the State Comptroller file #706). However, a "town may not care for a cemetery which is either a private cemetery or a cemetery control of which is vested in trustees or other corporate body" (1946 Opinion of the State Comptroller file #353). There is some complexity to this exemption, and organizational and management documents as well as public records for the cemetery entity should be consulted. State law requires that title to abandoned public cemeteries reverts to the town in which the cemetery is located and that the town to which title has so reverted must maintain the cemetery. For the complete text for this section of state law, see **APPENDIX A**.

**1<sup>st</sup> class cemetery** – title to which has been vested to town by virtue of its use by town residents for 14 years. The requirements for fencing/mowing are that a maintained fence encircling the cemetery is required, and must be mowed at least three times per year.

**2<sup>nd</sup> class cemetery** – by whatever ownership (other than private), control is not vested by a corporate body. Fencing is required in the front of the cemetery, and it must be mowed at least two times per year.

**3<sup>rd</sup> class cemetery** – any other than a private burial ground, which is abandoned or not controlled by any interest and no endowment or funds exist for its upkeep. Fencing must be maintained either in the front or encircling the cemetery, depending on discretion of the board and referendum requirements. There are no particular mowing requirements.

If the expenditures for such improvements are in excess of \$1,500 and is to be paid by taxes levied for the fiscal year in which such expenditure is to be made, or paid from the proceeds of town obligations, the adoption of any such resolution or resolutions shall be subject to a permissive referendum.

## What Cemeteries are Towns Required to Take Over?

Chapter 363 of the Laws of 2009 amended § 1506-c of the NYS Not-for-Profit Corporation Law, to allow the takeover of abandoned cemeteries by other solvent cemeteries and to allow them to access state funds for restoration and takeover. NYS Town Law § 291 requires towns to take over cemeteries previously or currently owned by a cemetery corporation organized pursuant to § 1504(c) of the NYS Not-for-Profit Corporation Law. Villages are not required to take over cemeteries, but can if they choose to.

Exclusions from this requirement are religious cemeteries, family cemeteries, and private cemeteries. There is an exception for family or private cemeteries, as highlighted in the case *Conn v Boylan*.<sup>1</sup> In that case, a cemetery originally organized as a family cemetery was mapped and divided into sections and plots with lots sold to the general public. This caused it to become a public cemetery, and therefore potentially transferrable to a town.

## Preventing Cemetery Abandonment

Most towns would rather not take on responsibility for additional cemeteries, which is what happens when public and regulated cemeteries are abandoned. There are strategies that towns themselves may take to try to prevent abandonment in the first place. A small amount of communication between the town to the cemetery board about the possibility of municipal assistance can prevent or delay the failure of an association and the necessity of town takeover of a cemetery. A first step would be to inventory the cemeteries in your community and talk to those currently managing cemeteries. Assess how viable the board is, their financial situation, and what problems they may be having.

Prior to 2010, towns had been prohibited from expending funds to help local cemeteries, as there was no statutory authority for providing aid. Working together, the New York State Association of Cemeteries and the Association of Towns helped secure the passage of Chapter 69 of the Laws of 2010, referred to as the “Municipal Assistance Law”.<sup>2</sup> This simply worded law may delay or eliminate the need for town takeover. The statute states in total:

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<sup>1</sup> 224 N.Y.S. 2d 823 (Sup. Ct. Suffolk 1962)

<sup>2</sup> § 165-a of NYS General Municipal Law

*“Any municipal corporation may appropriate and provide funding to a public cemetery corporation as defined in article fifteen of the not-for-profit corporation law. In lieu of or in addition to providing funding to a public cemetery corporation, any municipal corporation may provide goods and/or services to a public cemetery corporation as defined in article fifteen of the not-for-profit corporation law.”*

Small donations of goods or operational and management services from the town to the cemetery may be enough to keep the cemetery corporation solvent. For example, towns might assist the non-profit cemetery through services like mowing, general maintenance, road work, tree removal, snow removal, and bookkeeping. Town board communication with local cemeteries may provide the most effective preemptive investment strategy to prevent abandonment.

## State Division of Cemetery Resources for Preventing Abandonment

In 2018, the New York State Association of Cemeteries and the Association of Towns of New York helped secure passage of legislation to provide cemetery abandonment prevention and assistance for regulated cemeteries as well as the towns in which they are located. Despite having the support of local governments and nearly unanimous passage in the State Legislature, the Governor vetoed the legislation. However, the Governor did direct the State Cemetery Board to promulgate regulations to assist localities in preventing cemetery abandonment.

The result was the enactment of 2022 regulations on cemetery abandonment.<sup>3</sup> These regulations prescribe the process for regulated cemeteries to attempt to avoid abandonment, to seek other cemeteries to assume the management and maintenance of the cemetery, and the procedure for a determination of abandonment by the Cemetery Board. This formalized process has helped to eliminate some of the confusion between when a cemetery considers itself abandoned and when a town board is required to step in.

The abandonment prevention process prescribed by these regulations begins with the notification of local officials and other cemeteries by the State Division of Cemeteries that may be able to help the cemetery avoid abandonment. The Division of Cemeteries will then conduct an audit and an inspection of the cemetery as soon as practicable to better understand the necessary steps to avoid abandonment. Following an audit and inspection, the Division will hold a meeting with the cemetery as well as key stakeholders including town and officials and other cemeteries to develop a plan to avoid abandonment. The regulations also require that the risk of abandonment be discussed at the cemetery’s next lot owners meeting, or that a meeting of the lot owners be scheduled for this purpose if their next meeting is more than three months away.

Importantly, and of significant potential fiscal assistance to the local government, the regulations lay out the procedure for another cemetery to assume the management and maintenance of an abandoned cemetery pursuant to NYS Not-for-Profit Corporation Law § 1506-c.

Under this procedure, capable cemeteries may submit an application to the State Cemetery Board detailing their operational plan and their ability to take over the at-risk cemetery. This application must include:

- the approval of the lot owners of the applicant cemetery,
- evidence that the applicant has the resources necessary to operate the cemetery for the benefit of its lot owners and local communities,

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<sup>3</sup> Part 202 of Title 19 NYCRR, Cemetery Abandonments

- and a financial plan for the operation of the cemetery.

The application must also detail:

- any immediate plans for repair and improvement at the cemetery,
- whether the applicant will assume the name of the cemetery,
- and any religious affiliations of the cemetery or of those interred and whether the applicant will follow these customs and practices.

The application must also demonstrate compliance with public posting requirements to notify interested parties and receive public comments.

The regulations also detail the procedure the State Cemetery Board will follow for issuing a determination of abandonment. At any time after initiating the review process, the Division of Cemeteries may issue a written determination that the at-risk cemetery has been abandoned and therefore must be maintained by the town(s) in which it is located, pursuant to NYS Town Law § 291. This determination may be made at the sole discretion of the Division, or at request of the cemetery. Notice of such determination must be provided to officers of the cemetery corporation and any town in which the cemetery is located.

The Division's determination must contain a variety of information including a description of the standard used for the determination, the efforts to avoid abandonment and their results, the factors that led to the determination, and the cemetery's financial information.

Within sixty days of the Division's written determination, the State Cemetery Board will hear from the Division as well as representatives from the cemetery and the town(s). The Cemetery Board may then confirm, reverse, or seek additional information regarding the determination regarding abandonment.

## Cemetery Mergers as a Tool to Prevent Abandonment

A new section of the NYS Not-for-Profit Corporation Law, § 1506-d, was recently enacted to provide another tool for the prevention of abandonment of state regulated cemeteries to towns.<sup>4</sup> This law provides a detailed process for the merger of a financially-stable regulated cemetery with another cemetery and particularly with a cemetery at significant risk of abandonment.

Mergers may be a way for towns to encourage cemeteries within their jurisdiction to combine services and operations to strengthen both or multiple entities. Under the statutory requirements, the plan of merger or consolidation of these entities must meet a basic standard of being economically feasible and financially responsible.

This new tool is for circumstances where there is a reasonable belief that the surviving or consolidated corporation will be enhanced by the merger, and will result in a fully operational entity that would not become a burden to the community. In those instances where mergers are anticipated, it is required that the constituent cemeteries notify the town of the proposed consolidation.

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<sup>4</sup> Chapter 359 of the Laws of 2020 and further amended by Chapter 8 of the Laws of 2021

## We've Adopted the Cemetery: What Next?

When a town takes over an abandoned cemetery, there are several things to consider. First, the town should adopt a resolution to take over the cemetery. This provides a date-specific recording of the takeover. Additionally, the town should have previously asked the remaining members of the cemetery's board of trustees to send a letter to the town requesting the takeover. During this process, it is a good idea to invite the public to a workshop meeting, so they understand what is happening. This process follows a determination of abandonment by the state regulatory process previously described above or when an abandonment is evidenced by the state law or a voluntary takeover of an unregulated cemetery with the consent of the town.

The town will need to establish appropriate rates and charges based on practical costs associated with services to be provided at the cemetery. A good starting place is to look at what other cemeteries in the area are charging. Rules and regulations to manage the cemetery will also need to be adopted. An example of cemetery rules and regulations can be found in **APPENDIX B**. When considering a cemetery takeover, review the existing rules and regulations and look at examples of other local cemeteries for additional ideas.

Additional items to consider include who will have burial rights, who is going to perform maintenance, who is going to dig the graves, and will grave liners or vaults be required.

The town will also need to develop a monument installation application, to be administered through the town's building/code department. This form will need to tie directly with the cemetery's rules and regulations. The town should charge a nominal fee to cover the cost of processing these forms by the building department. Deed transfer documents will also need to be developed. Consider modifying the documents currently being used by the cemetery, with assistance from the municipal attorney. Several template documents are available on the town of Nassau's webpage:

[townofnassau.org/content/Generic/View/45](http://townofnassau.org/content/Generic/View/45).

Records retention and organization will be a long-term effort. The town needs to know what the cemetery consists of, number of graves, locations by reviewing deeds and any grave transfers. The town clerk and historian are critical personnel to help make this happen.

Keep in mind that there is a one-time and time-sensitive opportunity to apply for state funds (explained further below), and that municipal cemeteries do not have to report to the state with annual reports, following the formal abandonment to a municipality.

## Funds to Repair Abandoned Cemeteries

There is an abandoned cemetery fund, called the "New York State Cemetery Vandalism Restoration, Monument Repair or Removal and Administration Fund" administered by the NYS Department of State. It only applies to public abandoned cemeteries that have been taken over by a municipality, must be applied for within five years of town takeover, and is only available one time. The application for funding is available on the DOS's website, [dos.ny.gov/system/files/documents/2018/07/1807-f.pdf](http://dos.ny.gov/system/files/documents/2018/07/1807-f.pdf).

This fund application is an important resource to secure financial assistance for the purchase or upgrade of cemetery specific maintenance equipment, repairs and services to assist in easing the maintenance requirements following a town takeover.

It is also important to note that many corporate and foundation grant opportunities are only available to IRS designated 501(c)(3) organizations. Therefore, this state abandonment fund application should be comprehensive in scope for the takeover needs of the locality.

## Maintaining the Town's Abandoned Cemetery

While towns are under statutory requirement to provide maintenance of abandoned cemeteries, they are not required to use a particular entity or town service to conduct this maintenance. Town Law § 291 requires that the maintenance be completed under municipal oversight and not by what department or vendor completes these services. Town boards frequently struggle with maintenance issues for cemeteries that are abandoned to them.

There are various maintenance options or combination of maintenance options available to local governments: town employees, outside contractors, and/or volunteer organizations. It is most common to find town highway personnel doing much of the general work or parks department employees if a town is so fortunate to have such operations. However, highway departments are not required to maintain cemeteries. Some of the most frequent questions arise from the political and administrative reality of having the highway department personnel provide maintenance services for abandoned cemeteries. In those municipalities where the highway superintendent is an elected position and available personnel is limited, these may be delicate discussions. This ongoing maintenance arrangement may be an additional opportunity for the town's highway department to bill other funds outside their regular budget for work, thereby reducing fiscal concerns on behalf of the elected highway superintendent. If town employees are going to handle burial operations, the municipality should ensure all appropriate annual OSHA training is in place for trench work and have a policy to restrict employees from entering unshored excavated graves. If a highway department will be designated to handle specific projects or limited maintenance in a fiscal year, it is helpful for a town board to make this designation by resolution or through an annual planning document with the input of the highway department leadership. In municipalities with unionized highway employees, please be sure to have your legal counsel review any collective bargaining agreements for specific restrictions.

It is not uncommon for many municipalities to rely on commercial vendors for work outside of general maintenance. This often includes vendors for the digging and filling of graves. There are vendors across New York that specialize in just this service and go from cemetery to cemetery each day handling burials. Due to the challenges of older burial grounds and access, many municipalities rely on these vendor services as they can be cheaper than having town employees conduct such work and the outside vendors have equipment specially designed to handle these delicate tasks. If a town is going to utilize outside vendors to either enhance or conduct all such services, they should designate vendors annually through typical authorizations and the regular bidding process.

## Zoning Issues and Cemeteries

There are several zoning issues to consider with respect to cemeteries. Most cemeteries predate existing zoning laws, and may be grandfathered (exempted from zoning through nonconformity provisions where a cemetery would not otherwise be permitted). When prospectively zoning for cemeteries, it is common to permit them in rural or low intensity use areas. It is common to establish minimum lot size requirements for cemeteries that are well above those allowable for other uses in the zone, depending on the intensity of the other permitted uses. It is also common to establish larger yard requirements, particularly where accessory uses and structures such as mausoleums and columbaria are included on the site. Communities often require the screening of cemeteries from adjacent residences by fences or vegetation. Cemeteries should be sited

well away from potable water supplies, and out of wetland and floodplain areas. It is good policy to require gravesites to be within reasonable distances of access roads, and access roads should remain private, undedicated drives. Cemetery lands may be subject to community subdivision requirements unless specifically exempted. The size of individual cemetery lots, plots, or any part thereof are regulated by the individual cemetery corporation.

## Leasing of Unused Cemetery Lands

The State Legislature recently amended the Not-For-Profit Corporation Law to provide another tool for regulated cemeteries to enhance their viability and revenue streams.<sup>5</sup> Cemeteries are permitted to lease a portion of their vacant lands which are not needed for cemetery purposes during the period of the lease.

For instance, a cemetery has a large tract of land that is undeveloped and will not be needed for 100 years based on their interment history. The cemetery may be authorized to lease this excess land to build a dedicated revenue stream for the long-term preservation of the cemetery without having to sell the property and risk losing it as a future resource.

The State Cemetery Board must review several criteria for the approval of these leases which in most cases will also require local approvals. Any lease of unused cemetery lands is required to include a security provision, approved by the Cemetery Board, for the restoration of cemetery lands to cemetery purposes at the conclusion of a lease.

This type of leasing has involved crop production, cell towers, solar farms, and commercial operations. It is important to note that commercial development of this excess land frequently means that tax-exempt property becomes developed as a commercial assessment for the period of the lease, thereby not just assisting in sustainability of the cemetery, but also providing additional local tax revenue for all taxing jurisdictions in the town.

## Stand-Alone Mausoleum and Columbarium Prohibitions in Municipalities

In 2018, following the largest cemetery abandonment in state history, the State Legislature advanced a bill to prohibit the construction of stand-alone mausoleums or columbariums in the state without following specific requirements. The legislation was signed into law later that year.<sup>6</sup>

This devastating cemetery abandonment had been an operation made up of stand-alone mausoleum and columbarium locations. It was not a cemetery that offered inground burials as someone would envision a typical cemetery operation. The result was that the deteriorating stand-alone structures, at the time of abandonment, required a rural community to seek millions of dollars in repair costs in order to prevent the failure of the structures after the required town takeover. The new law represents the state's effort to prevent this type of financially unsustainable cemetery operation in future.

It is important to note that mausoleums and columbariums remain permitted in traditional cemetery operations but not as the only form of burial option.

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<sup>5</sup> Chapter 200 of the Laws of 2022; NPCL § 1506-e

<sup>6</sup> Chapter 296 of the Laws of 2018; NPCL § 1506(m), RCO § 7

There has been a proliferation of columbariums across New York in houses of worship, private parks, and at community organization locations. It is important for municipalities and their planning boards to understand that such structures are now no longer permitted by state law without additional considerations. Specifically, no religious corporation nor any non-profit organization may construct a stand-alone mausoleum or columbarium in any city, town or village without a management contract with an existing state regulated cemetery. The owner of these structures must also have secured space sufficient at a state regulated cemetery so that, in the event the organization ceases to function or abandonment of the structures occurs, there is funding and a place to move the human remains for memorialization and perpetual care.

With the dramatically increasing cremation rate in New York, localities will see an increase in memorial options to hold these cremated human remains. Towns should make sure their planning and zoning guidelines address this issue to provide clarity and direction to applicants and boards with regards to these stand-alone structures.

## Burial on Private Property

New York State law does not prohibit burials on private property. However, local governments may regulate this practice by local law. Many towns and villages do prohibit such burials and the local municipality should be contacted to determine if any restrictions exist. Examples of local laws on this subject can be found in **APPENDIX C**.

In communities where there is no local law restricting burials on private property, there are issues related to these burials that communities need to consider. The property with private burials will most likely not remain in the hands of the family for generations to come, thereby creating problems of accessing the burial site. Having human remains on a property outside of a designated cemetery could create a problem when selling the property in the future. When property is sold and transferred to new owners, maintenance of the burial site could be discontinued. A good discussion of these issues can be found in an article entitled "Don't Bury Grandma in the Backyard" by David Fleming and is reprinted in **APPENDIX D**.



***"Show me your cemeteries, and I will tell you what kind of people you have."***

Benjamin Franklin  
(1706 - 1790)

## APPENDIX A: NYS Town Law § 291. Burial grounds.

1. **[1<sup>st</sup> class cemetery:]** The title to every lot or piece of land which shall have been used by the inhabitants of any town in this state as a cemetery or burial ground for the space of fourteen years shall be deemed to be vested in such town, and shall be subject in the same manner as other corporate property of towns, to the government and direction of the town board. In any town the town board may adopt regulations for the proper care of any such cemetery and burial ground and regulating the burial of the dead therein. It shall be the duty of the town board to remove the grass and weeds from any such cemetery or burial ground in any such town at least three times in each year, and to erect and maintain suitable fences around such cemetery or burial ground. **[2<sup>nd</sup> class cemetery:]** The town board of any town must also provide for the removal of grass and weeds at least twice in each year from any cemetery or burial ground, by whomsoever owned, in such town, where such control is not vested by other provisions of law in the town or in trustees or other corporate body, and provide for the preservation, care and fencing of any such cemetery and **[3<sup>rd</sup> class cemetery:]** the town board of any town must also provide for the removal of grass and weeds from all cemeteries, other than private burial grounds, which are abandoned or not controlled by any existing board or body and for the care of which there exists no special fund or endowment and such duties shall be performed under the supervision of the town board, or a person whom the town board may designate; provided, however, that such duties shall not be exercised in respect to any private ground or particular lot or lots therein after the true owner or owners thereof file written objections thereto with the town clerk. The cost and expenses of any officer or person in performing any duties under or pursuant to the provisions of this section shall be a town charge, and the town board shall appropriate and provide annually the moneys necessary for carrying out the provisions of this section, and make the same available for the proper officer or persons by whom the moneys are required to be expended. The town board may also receive and execute any trust for the care of any cemetery which the town is required to care for pursuant to the provisions of this section and to receive and execute any trust for the care of lots in any such cemetery.

2. Burial grounds and cemeteries of which the title is vested in or the care or control is charged upon any town, by virtue of this section, shall not be taxed or assessed for any local improvement or other purpose whatsoever by any village, and no action shall be maintained against any town to recover the cost of any local improvement or municipal charge, based on town ownership or care of such burial grounds, the provisions of any special, local or general statute whatsoever to the contrary notwithstanding.

3. Upon the adoption of a resolution therefor, the town board may construct and maintain permanent improvements in any one or more of the classes of cemeteries described herein and may acquire, by purchase or condemnation, additional lands for cemetery or burial ground purposes, whenever in the judgment of the town board it is necessary or advisable that such improvements be made or additional lands be acquired. If the expenditure for such improvements or acquisition is in excess of one thousand five hundred dollars and is to be paid by taxes levied for the fiscal year in which such expenditure is to be made, or paid from the proceeds of town obligations, the adoption of any such resolution or resolutions shall be subject to a permissive referendum. The improvements so made or the lands so acquired shall be used only for the purposes authorized by this article but such cemeteries or burial grounds so improved or enlarged shall not be subject to conveyance or transfer pursuant to section two hundred ninety-two of this article. The expense of such improvements and/or the acquiring of such lands may be financed in the manner provided in article fifteen of this chapter for the financing of general improvements.

4. Notwithstanding any other provision of law, upon the adoption of a resolution therefor, the town board of the town of Southampton may transfer title to the cemetery vested in such town, located at the corner of Madison street and Latham street and bearing Suffolk county tax map identification number 473609-3-4-27, to the village of Sag Harbor, provided, however, that such transfer shall be made only upon the adoption of a resolution by the board of trustees of the village of Sag Harbor, requesting the town of Southampton to make such transfer.

## APPENDIX B: Sample Cemetery Rules and Regulations.

### Town of \_\_\_\_\_ Cemetery Rules and Regulations

The following Rules and Regulation are hereby adopted, and approved by the \_\_\_\_\_ town board on and put in effect for the mutual benefit and protection of each and every lot, plot, and grave owner in the above named cemeteries.

#### **Rule #1: GENERAL**

1. All affairs of the \_\_\_\_\_ town cemeteries are managed and governed by the \_\_\_\_\_ town board in furtherance of Article 17 of the NYS Town Law.
2. All lots sold in accordance with the provisions of the laws of New York State shall not be used for any other purpose than a burial place for deceased human beings.
3. The town board shall fix the prices of burial lots and no person shall take possession of such lot, nor make any encroachments thereon until the price of such lot has been paid for in full.
4. The cemeteries superintendent of works for the town of \_\_\_\_\_ will act as the caretaker of all town cemeteries.
5. The caretaker shall report to the town board any acts of vandalism or encroachments. The caretaker shall supervise any improvements made to any lot by lot owners that are approved by the town board.
6. No interment shall be allowed without a state approved burial permit.
7. No more than one casket burial or two cremations are allowed in a single lot. One cremation on the top of one casket burial is also permissible when previously approved by the town board.
8. Lot owners are prohibited from allowing interments to be made on their lots for compensation.
9. No lot owner may transfer his or her lot without permission of the town board.
10. No trees, hedges, shrubs or walls will be allowed. No glass of any kind allowed except religious. All others will be removed. All flowers and urns must be no more than 14 inches from monument or markers.
11. The \_\_\_\_\_ town board reserves the right to authorize the following:
  - a. Remove all flowers, wreaths, or other decorations from lots as soon as they become unsightly;
  - b. Remove after due notice to the lot owner any embellishment on the lot, effigy, or inscription which is unsightly or dangerous.
  - c. Move any existing tree or shrub that covers any stone marker or any upkeep growth that is not maintained.
  - d. The town shall have the authority to prune, remove, or transplant any existing tree, shrub, or planting that they deem fit.
  - e. Placing of glass blocks or vases such as receptacles for flowers, either artificial or grown on graves or plots is prohibited.
  - f. All foundations, placement of stones and grave markers and other work shall be constructed as approved and directed by the \_\_\_\_\_ town board.
  - g. All grave and/or plots require the purchase and installation of corner lot markers.

12. Graves will not be opened between November 15<sup>th</sup> and April 15<sup>th</sup>, unless an exception is authorized by the \_\_\_\_\_ town board, in which case special fees will apply.
13. Concrete vaults or concrete grave liners will be required for all interments in graves located in town cemeteries.
14. The interment of cremated remains will be permitted only in appropriate rigid receptacles such as wood, metal, plastic, or concrete.
15. The \_\_\_\_\_ town board shall fix prices for grave openings along with any other charges for proper maintenance of town cemeteries as they deem fit.
16. These rules and regulations may be amended and/or added to by majority vote and appropriate resolution of the \_\_\_\_\_ town board.
17. Constructions of mausoleums are not allowed in town cemeteries.
18. Construction of individual lot/plot fences are not allowed in town cemeteries.
19. Heavy trucking or other vehicular traffic shall be refused entrance to the cemetery, when in the opinion of the designee or caretaker, will cause injury to the roads or driveways.
20. No material shall be allowed to remain longer than is reasonably necessary for any construction work. No work shall be started on Saturday which cannot be completed on that day.

**Rule #2: OFFICIAL RECORDS**

1. The official records of all lot owners shall be maintained by the caretaker in coordination with the town of \_\_\_\_\_ clerk's office. Such registration shall be the final governing record in determination of lot ownership.

**Rule #3: RIGHT OF INGRESS AND EGRESS RESERVED**

1. The town of \_\_\_\_\_ reserves to itself and to those lawfully within the cemetery a perpetual right of ingress and egress over all graves and lots for the passage to and from other graves and lots.

**Rule #4: INTERMENT & DISINTERMENT/REMOVAL REGULATIONS**

1. No interment shall be made on Sunday OR holidays, except in cases of special necessity, religious reasons, or contagious diseases, in which case special fees can be charged.
2. The town of \_\_\_\_\_ reserves the right to insist upon two working days notice prior to any cremations or interment.
3. No disinterment shall be made except by the town of \_\_\_\_\_ employees or approved special contractor by a written request of the lot owner. A body or cremated remains may be removed from its original plot to a larger or more desirable plot when there has been an exchange or purchase for that purpose and when all the legal representatives of the deceased consent and has the town. The town of \_\_\_\_\_ reserves the right to perform any removal or disinterment at its convenience or as directed by Court Order.

**Rule #5: CASKET OPENINGS**

1. Once a casket containing a body is within the confines of the cemetery, no funeral director, his assistant, employee or agent, or any member of the deceased's family shall be permitted to open the casket or touch the body without the consent of the legal representative of the deceased, or without a Court Order.

**Rule #6: CONDUCT OF PERSONS**

1. **WALKS.** Persons within the cemetery shall use the walks and roadways, and only where absolutely necessary for ingress and egress, shall they cross other lots, plots or burial spaces.
2. **TRESPASSING.** Lots, plots and grave spaces are for the right of interment of the owners of such lots, plots, and grave spaces, and only the owners, heirs and representatives of the persons interred therein shall be permitted on said lots, plots and graves spaces except where means of ingress and egress to other lots, plots, or grave spaces are necessary. Violators of this rule shall be considered as trespassers.
3. **CHILDREN.** Children under 15 years of age shall not be permitted within the cemetery unless accompanied by adult persons who are responsible for their care and their conduct.
4. **FLOWERS.** All persons are prohibited from gathering flowers, either wild or cultivated, anywhere within the cemetery and from individual graves.
5. **FIREARMS AND ALCOHOLIC BEVERAGES.** No Firearms or intoxicating beverages or liquors shall be permitted upon the lots or within the town of \_\_\_\_\_ cemeteries at any time, except in the case of firearms for the purpose of a military funeral or historic honors under proper command.
6. **DOGS.** Dogs shall not be permitted in the cemetery or in any cemetery buildings.
7. **ADVERTISING.** No signs (private or political) or notices or advertisements of any kind shall be allowed in the cemetery or on premises surrounding the cemetery.
8. **SOLICITING.** Peddling of flowers or plants, or soliciting the sale of any commodity is positively prohibited within the confines of the cemetery.
9. **REFRESHMENTS.** Neither the bringing of, the sale of, or the use of refreshments upon the cemetery premises shall be permitted.
10. **MOTOR VEHICLES.** No motorized vehicle shall be driven through the roadways of the cemetery at a greater speed than ten miles per hour. No vehicle driver training shall be conducted on the grounds of the cemetery.
11. **RUBBISH.** The throwing or disbursement of garbage or rubbish of any kind is prohibited in town cemeteries.

**Rule #7: MODIFICATIONS AND AMENDMENTS TO THE RULES**

Special cases may arise in which the literal enforcement of a rule may impose unnecessary hardship. The town of \_\_\_\_\_ reserves the right in such cases, to make exceptions, suspension, or modification. Any such temporary exception, suspension or modification shall in no way be construed as affecting the general application of the rule.

The town of \_\_\_\_\_ may reserve the right at any time to amend, alter, or repeal any rule or regulation for Cemeteries in the town of \_\_\_\_\_. This right to change or amend any part or all of the above rules and regulations for Town cemeteries can be made without prior notice to the lot owners.

Questions relative to the town of \_\_\_\_\_'s Cemeteries Rules and Regulations can be address to the Cemeteries Supervisor of Works and/or the \_\_\_\_\_ town board.

## APPENDIX C: Sample Local Laws

### TOWN OF CATSKILL - BACKYARD BURIALS LAW

#### ARTICLE A: INTRODUCTION

Section 1. Authority. Be enacted by the Town Board of the Town of Catskill, New York as follows:

Section 2. Title. This Local law shall be known as "A local law regulating backyard burials in the Town of Catskill, New York."

Section 3. Purpose: By adoption of this law the Town of Catskill declares its intent to regulate backyard burials to preserve the quality of the environment and the public health of the community in general.

Section 4. Applicability - The provisions of this law shall apply in addition to the provisions of any other local law or ordinance adopted by the Town of Catskill. Where there is conflict the more restrictive provision shall apply.

#### ARTICLE B: PROHIBITED ACTS

It shall be unlawful for any person to cause the remains of a human being to be buried, or establish a burial ground for such purpose, in the Town of Catskill in any ground not set apart and recognized as a municipal, religious, not-for-profit corporation cemetery, or family maintained cemetery.

#### ARTICLE C; ADMINISTRATION AND ENFORCEMENT

Section 1. Code Enforcement Officer. This law may be enforced by the Town Code Enforcement Officer, Asst. Town Code Enforcement Officer or by any individual so authorized by the Catskill Town Board.

Section 2. Complaints. Any person may file a complaint with the code enforcement officer that a violation of this law may have taken place.

Section 3. Notice to Comply. The written notice to comply should contain the following information:

1. The name of the owner or occupant of the property to whom the notice shall be addressed.
2. The location of the premise involved in the violation.
3. A statement of facts, which is alleged, violates the law.
4. A statement that a failure to comply with the demand may result in prosecution.
5. A copy of the law.

Section 4. Enforcement and Summary Abatement. The enforcement officer is hereby authorized pursuant to Criminal Procedure Law 150.20(3) to issue an appearance ticket to any person whom the enforcement officer has reason to believe has violated this law, and shall cause such person to appear before the municipal justice.

Any violation of this local law is punishable after a finding of guilt in the Justice Court of the Town of Catskill:

1. By a fine fixed by the Justice Court in its sole discretion in an amount of not less than \$250.00, or no more than \$2000.00.
2. The remains of the human being must be removed and buried in the Town of Catskill in ground set apart and recognized as a municipal, religious, not-for-profit corporation or family maintained cemetery at the violator's expense within five days of such finding of guilt.

#### ARTICLE D: MISCELLANEOUS PROVISIONS

Section 1. Severability. If any clause, sentence, paragraph, section or article of this law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the

remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or article thereof directly involved in the controversy in which such judgment shall have been rendered.

Section 2. Effective Date. This local law shall become effective upon the date it is filed in the Office of the New York Secretary of State.

## **LOCAL LAW NO. 2 QF YEAR 2006**

### **"A Prohibition of Private Property Burial in the Town of Amsterdam"**

A Local Law prohibiting the burial of human remains or the establishment of burial grounds on privately owned property in the Town of Amsterdam.

Be it enacted by the Town Board of the Town of Amsterdam as follows:

Section 1. Title. This Local Law shall be referred to as "A Prohibition of Private Property Burial in the Town of Amsterdam,"

Section 2. Purpose and Intent. Pursuant to the statutory powers vested in the Town of Amsterdam (hereinafter the "Town") to regulate and control land use, and to protect the health, safety and welfare of its residents, the Town Board of the Town of Amsterdam (hereinafter the "Board") hereby declares a Local Law prohibiting the burial of human remains or the establishment of burial grounds on privately owned property within the Town.

In the past the Town has received inquiries regarding a property owner's rights to bury human remains or to establish burial grounds on their private property. The Town anticipates that it will continue to receive inquiries in the future, and the Board desires to address this issue on a comprehensive Town-wide basis, rather than on an ad hoc basis, and to adopt this Local Law to properly regulate same.

Section 3. Prohibitions. No person shall cause the remains of a human being to be buried, or shall establish burial grounds for such purpose in the Town in any privately owned grounds not set apart and recognized as a municipal, religious, or not-for-profit corporation cemetery.

Section 4. Preexisting Cemeteries. This Local Law shall not alter the status of private burial grounds or cemeteries currently existing within the Town at the enactment of this Local Law.

Section 5. Enforcement. This Local Law shall be enforceable by the Town Constable or any other recognized peace officer.

Section 6. Penalties. A violation of this Local Law shall be deemed an offense and punishable, by a fine fixed by the court, not less than fifty nor more than two hundred fifty dollars.

Section 7. Validity. The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law which can be given effect without such provision.

Section 8. Repealer. This Local Law shall supersede all prior local laws, ordinances, rules and regulations relative to the burial of human remains or establishment of burial grounds on private property within the Town of Amsterdam and they shall be, upon the effectiveness of this Local Law, null and void.

Section 9. Effective Date. This Local Law shall take effect immediately upon filing in the Office of the Secretary of State in accordance with section 27 of the Municipal Home Rule Law.

## VILLAGE OF GRANVILLE- Burial Law - Local Law No.: 4-2009

LOCAL LAW ESTABLISHING A PROHIBITION AGAINST THE BURIAL OF HUMAN REMAINS WITHIN THE VILLAGE OF GRANVILLE OUTSIDE OF THE TWO ESTABLISHED CEMETERIES.

BE IN ENACTED by the Village Board of the Village of Granville, State of New York, as follows:

I. SHORT TITLE. This Local Law shall be known and may be cited as the "Local Law Establishing a prohibition against the burial of human remains within the Village of Granville outside of the two established cemeteries".

### II. LEGISLATIVE INTENT AND FINDINGS OF FACT.

A. Background: The Village of Granville, Washington County, New York, is concerned about burial of human remains in the Village of Granville outside of the two designated cemeteries and the standards necessary to promote the health, safety, and general welfare of the inhabitants of the Village of Granville. It is therefore necessary for the Village Board of the Village of Granville to prohibit the burial of human remains outside of the two cemeteries in the Village of Granville limits to promote the health, safety, and general welfare of the inhabitants of the Village of Granville.

B. Legislative Finding of Fact: The Village Board does hereby find that appropriate and salutary measures must be taken to protect the public interest by prohibiting the burial of human remains outside of the two designated cemeteries in the Village of Granville and setting fine amounts for violation of the burial of human remains in the Village of Granville for each day such remains are buried in the Village of Granville, as well as, the authority to seek the removal of such remains by the Washington County Supreme Court.

C. Legislative Intent: Pursuant to authority duly vested in it, it is the intention of the Village Board to protect the public interest and to preserve its intended objectives and ensure implementation by hereby adopting a prohibition against the burial of human remains in the Village of Granville outside of the two designated cemeteries in the Village of Granville, and thereby to protect the public interest and welfare.

III. DEFINITIONS. For the purpose of this chapter the following words shall have the meanings herein ascribed to them; all other words shall have the meanings normally ascribed to them in regular use.

A. Human Remains: The earthly remains of any person, human being, or Homo sapiens, including any cremated remains of such person or persons.

B. Cemetery: The two designated cemeteries in the Village of Granville wherein human remains have been placed in accordance with New York State Cemetery Law.

C. Village of Granville: Any place within the incorporated limits of the Village of Granville.

D. Burial: Burial shall mean the interment or entombment of any human remains.

IV PROHIBITIONS. No person shall bury any human remains within the Village of Granville.

V. EXCEPTIONS. Burial of human remains may continue in the two designated cemeteries within the Village of Granville and nowhere else in the Village of Granville.

VI PENALTIES. The violation of this Local Law shall constitute a violation and a person found guilty thereof shall be punishable by a fine of not more than \$2,500.00, imprisonment for not more than 15 days in jail, or both such fine and imprisonment for each day the human remains continue to be buried in the Village of Granville outside of designated cemeteries.

VII. REMEDIES. The Village of Granville shall seek a Court Order from the Washington County Supreme Court to have any human remains exhumed that have been buried outside of the designated cemeteries in the Village of Granville and the Village shall be reimbursed all legal costs and any other cost associated with Court action, as well as the costs associated with exhuming the human remains from the individuals or entity that caused the human remains to be buried in the Village of Granville outside of the two designated cemeteries.

VIII. VALIDITY. The invalidity of any work, section, clause, paragraph, sentence, part or provision of this Local Law shall not affect the validity of any other part of this Local Law which can be given effect without such invalid part or parts.

IX. EFFECT ON OTHER LAWS. All ordinances and laws or parts of ordinances and laws in conflict with the provisions of this Local Law are hereby superseded to the extent necessary to give this Local Law full force and effect during the effective period.

X. HOME RULE. This Local Law is adopted pursuant to the authority granted to the Village as set forth in Section 10 of the Municipal Home Rule Law and Statutes of Local Government.

XI. EFFECTIVE DATE. This local law shall take effect immediately upon the filing of this local law with the New York Secretary of State.

## APPENDIX D: Don't bury Grandma in the backyard!

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### **New York Governmental Relations**

Conversations at social gatherings usually take an unexpected turn when someone finds out that you have represented cemeteries for two decades. Aside from the usual macabre inquiries, one question is frequently asked. It is also one I face in my office every week.

#### ***May I bury someone on my property?***

Obviously, the sarcastic person would say that you should insure that they are dead first! Seriously, this is an interesting question in New York and one, if you are serious about it, should not be considered lightly. The commitment you are making with the burial of your loved one extends far beyond your lifetime.

New York State law does not prohibit burials on private property. However, local governments regulate this practice as a zoning issue. Many towns do prohibit such burials. You must first check with your local municipality to determine if any restrictions exist.

#### ***If your local government doesn't prohibit burials on private property should you still do it?***

There are obviously many emotional reasons New Yorkers consider burying their loved ones close to the house or on the family farm. Put those aside and consider the very practical problems related to burials on private property.

I continuously field calls from families that had previously made the decision to bury at their homestead and were facing unexpected and difficult circumstances. In many cases, these decisions were made a generation or two before the current issue developed.

In every instance, the families thought the family farm or their home to generations would continue to be just that. A family inheritance. The financial downturns of the past decade have led to the loss of

property and the unexpected departure of the caretakers of these graves. Unexpected deaths and family experiences also change this paradigm.

Most people do not realize that New York does not provide for a right of entry onto private property to visit and care for a loved-one's grave. In many examples, family members show up to visit the grave of a departed relative only to discover the new owners are not all that thrilled to have a mourner crossing their property. They are less thrilled if you are planting flowers or shrubs on a portion of their property they would most likely wish to forget about. This has led to some dangerous situations. It has also led to the removal of monuments and court actions.

If you are going to seriously entertain burying Grandma in the rose garden, consider the implications for years to come. You will need to hire an attorney to guarantee an iron clad right-of-way to the grave site and to exclude that portion of the property from future sales. That attorney is going to need a survey of the excluded grave space and entryway so retaining a surveyor is in order.

You should also consider whether or not the burial location will hinder future sales of the property. In addition, if the property leaves the family and the property becomes dilapidated, will you want your loved one buried next to such a mess? You will also need to consider if there will be adequate protections for any monument you erect.

Failing to take any of these precautions will only set you or future generations of your family up for charges of trespass and emotional strife.

***I know of very few experiences where these interment choices end well.***

If you wish to take the practical and reasoned road, take a pass at interring Uncle Bill in the back forty and choose a state regulated cemetery. All regulated cemeteries in New York are required to be not-for-profits. They are required to maintain your loved-one's grave and your future access is guaranteed.

Additionally, these are forever places. In New York State, if a regulated cemetery becomes abandoned, it becomes the ward of the municipality in which it is located. Towns then become the caretakers of these places of memory.

New York's not-for-profit cemeteries are where memories, art and history meld and provide comfort in perpetuity. They will protect your loved one's memory longer than the next land sale.