



INFORMATION MEMO

Cemetery Regulations

Learn about the legal requirements and issues associated with municipal cemetery establishment, maintenance, and care. Contains links to LMC model ordinances establishing a city cemetery and regulating its maintenance and use, establishing a permanent care and improvement fund, and a cemetery lot agreement.

RELEVANT LINKS:

[Minn. Stat. § 412.221, subd. 9.](#)

[Minn. Stat. § 412.211.](#)
[Minn. Stat. § 465.01.](#)

I. Types of cemeteries

There are three types of cemeteries in Minnesota. The first are private cemeteries, which restrict burial to a certain group of people, such as a fraternal organization or a particular religious group. The second type is city-owned cemeteries, which are often referred to as municipal cemeteries. Municipal cemeteries are public cemeteries because lots are sold without restriction. The third type is public cemetery associations. Public cemetery associations are privately owned, but lot sales are open to the public without restriction. Although municipal cemeteries are separate from public cemetery associations, background information on public cemetery associations can be helpful in regulating cemeteries and any transfer of cemetery ownership between a city and a public cemetery association. This memo discusses legal requirements and issues associated with municipal cemetery establishment, maintenance, and care. Public cemetery associations are briefly discussed as they relate to municipal cemeteries.

II. Municipal cemeteries

Statutory cities have the express authority to establish and maintain cemeteries. A city may acquire a cemetery through purchase, gift, condemnation, or devise of land. Devise is a gift given through a will. A city may provide funds for the cemetery's upkeep including its layout, enclosures, and ornaments on the grounds. The city may also sell and convey the lots to members of the public. Additionally, a city has the authority to regulate cemeteries and the disposal of the dead by ordinance.

A. Land purchase

Statutory cities have express authority to purchase property for a city purpose, such as a cemetery.

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

RELEVANT LINKS:

[A.G. Op. 870j \(June 2, 1959\).](#)

[Minn. Stat. § 412.211.](#)
[Minn. Stat. § 306.025, subd. 1.](#)
[A.G. Op. 870j \(June 2, 1959\).](#)

[Minn. Stat. § 465.01.](#)
[Minn. Stat. ch. 117.](#)
[Handbook, *Comprehensive Planning, Land Use, and City-Owned Land*, Section V-C, *Eminent domain*.](#)

[Minn. Stat. § 410.01.](#)
[Minn. Stat. § 471.84.](#)

[Minn. Stat. § 471.59, subd. 1.](#)
[Handbook, *Intergovernmental Cooperation*.](#)
[LMC information memo, *Intergovernmental Cooperative Agreements*.](#)

While most municipal cemeteries lie within the boundaries of the city, state statute allows cities to acquire real property outside city limits for municipal purposes. This general grant of power is likely broad enough to allow cities to establish a cemetery outside of its boundaries as long as it will be used for burial of city residents.

Additionally, cities are authorized to accept the transfer of an existing public cemetery located either inside or outside city limits.

1. Eminent domain

All cities have the authority to take (or condemn) private property for public use as long as they pay the landowner reasonable compensation. Essentially, this is a way to require that an owner sell his or her land to a city. This procedure requires a formal court action, and a city must pay an owner for the value of the land, or the damages to the land if the city is taking only part of the private property for a public purpose, such as an easement. Occasionally, a city may desire to expand its municipal cemetery but cannot come to an agreement with the neighboring property owners. In such cases, the power of eminent domain may be used. However, before using this power, the city must establish that the addition is required because of public necessity, propriety, and convenience.

B. Funding cemeteries

Statutory cities may appropriate funds to maintain a cemetery the city owns. Additionally, any statutory city or any city of the fourth class (population of no more than 10,000) is authorized to appropriate up to \$10,000 per year to any other public or private cemetery. The cemetery does not have to be located within the city limits, but it must allow burials from any city without restriction.

C. Joint operation and maintenance

The Joint Powers Act authorizes cities to cooperatively exercise any powers common to the participating units of government. In addition, local governments (such as counties and cities) may enter into agreements whereby one entity will exercise power for both governments. For example, a city and a county may enter into a joint powers agreement for operation of a cemetery where both governments engage in operation and maintenance through that joint powers entity. In exercising such powers, local governments are not necessarily confined to their territorial limits.

RELEVANT LINKS:

[Minn. Stat. § 471.24.](#)

[Minn. Stat. § 471.24.](#)

[A.G. Op. 870a \(Dec. 31, 1959\).](#)

Handbook, *Elected Officials and Council Structure and Role*.

[Johnson v. State](#), 553 N.W.2d 40 (Minn. 1996).

[Minn. Stat. § 15.17.](#)

1. City-town and city-city joint maintenance

In addition to the joint powers agreement, cities and towns may enter into a joint agreement for maintenance of a cemetery. If a city or town owns an established cemetery, either within city limits or outside, it may enter into a mutual agreement with neighboring towns or cities for the maintenance of the cemetery. In order to enter into a joint agreement:

- The cities or towns must have contiguous borders.
- Each entity must have an estimated market value not less than \$2,000,000.
- The cemetery must be open for burial of residents from all municipalities.

Once the municipalities have established a joint agreement for maintenance, each may appropriate up to \$10,000 per year toward upkeep of the cemetery. The council or governing board may also levy a tax to generate funds for maintenance.

D. Cemetery board

The city council may appoint a cemetery board and delegate ministerial power to it. However, the city council must retain complete discretionary control of the cemetery.

The courts have not explicitly described the meaning of discretionary administrative power. They have, however, provided several rules that offer some basis for distinguishing which powers the council can delegate.

Discretionary powers or functions are those that involve the exercise of judgment. Ministerial functions are absolute, fixed, and certain so that no judgment is necessary in fulfilling them.

For example, in exercising ministerial power, the cemetery board may advise the city council on setting lot prices for the cemetery. Yet, it is the city council that has the discretionary authority to actually set the lot fees.

E. Recordkeeping

While there appears to be no specific statutory recordkeeping requirement for municipal cemeteries, the city is required to keep full and accurate records of its official activities. Therefore, if a city owns a cemetery, it must keep current and accurate records. Specifically, a burial register, information on each person buried or interred in the cemetery, and a cemetery map are important records to maintain.

RELEVANT LINKS:

[Minn. Stat. § 306.03.](#)

[Minn. Stat. § 306.03.](#)

[Minn. Stat. § 13.03.](#)

[General Records Retention
Schedule.](#)
[Minn. Stat. § 138.17.](#)

[Minn. Stat. § 15.17.](#)

1. Burial register

The specific information for each individual buried in the cemetery is not prescribed in statute for municipal cemeteries. However, public cemetery associations are specifically required to record certain information on each person buried or interred in the cemetery. Although the requirements do not apply to municipal cemeteries, such requirements may be a helpful guide for cities.

For instance, cemetery associations must include the following information for each person buried or interred in the cemetery:

- Date of burial, entombment, or cremation.
- Name, date of birth, sex, nativity, and cause of death.

The information should come from a reliable source to ensure it is accurate. Public cemetery associations are required to obtain the information from friends, the attending physician, or the undertaker in charge. In the case of a pauper, stranger, or criminal, the information may come from the public official directing the burial. While cities are not required to obtain information from specific sources, it could be helpful to establish from whom information should come to ensure the information is correct.

For municipal cemeteries, the burial record is government data and is classified as public data under the Minnesota Data Practices Act. This means the burial record must be accessible to the public for inspection. If someone requests to see the burial record or wants a copy of it, the city must produce the record in accordance with the Minnesota Data Practices Act. Additionally, under the Minnesota Records Retention law, the retention period for the burial record is permanent, which means that burial records may never be destroyed.

2. Cemetery map

In order to maintain an accurate record of the city's actions regarding the cemetery, a map of the cemetery land is necessary. Although cities are not technically required to maintain a map, for practical purposes the cemetery map is necessary for lot sales, burials, and future planning for cemetery improvements.

Consequently, it would be prudent to maintain a map that illustrates the cemetery land and how the land is divided into lots, including all alleys, roads, and walks. If new land is either donated or purchased, the city would update the map by having the cemetery surveyed.

RELEVANT LINKS:

[Minn. Stat. § 306.02.](#)
[Minnesota Association of Cemeteries.](#)

[Minn. Stat. § 306.01.](#)

[Minn. Stat. § 306.02, subd. 1.](#)

[Minn. Stat. § 306.02, subd. 1\(2\).](#)

[Minn. Stat. § 306.05.](#)

III. Public cemetery association

Cities are not authorized to form public cemetery associations and are not considered a public cemetery association. However, there are a few reasons cities may need to be familiar with public cemetery association laws. First, state statute provides little guidance for the operation of a municipal cemetery; however, there are several statutes governing public cemetery associations. In some cases, these statutes may serve as a helpful guide for cities. Second, a city may transfer its cemetery ownership to a public cemetery association, or the association may transfer its cemetery ownership to a city.

Third, cities may contract with a public cemetery association to operate or maintain a municipal cemetery. In all of these instances, a basic understanding of public cemetery associations may be useful.

A. Association incorporation

A public cemetery association may be formed to secure, hold, or sell land or lots used exclusively for the purpose of a public cemetery. Public cemetery associations established after March 1, 1906, must organize and follow state statutes.

To establish a public cemetery association, three or more persons, who become the trustees of the association, must initiate incorporation. The trustees must also verify the certificate or articles of incorporation. The certificate of incorporation must be recorded with the county recorder's office of the county where the cemetery is located. Upon filing, the association is a corporation.

B. Powers of public cemetery association

A public cemetery association has many powers that enable it to manage its operations and grounds.

1. Acquisition of land by purchase or gift

Once incorporated, a public cemetery association may acquire and manage all real and personal property necessary for the establishment, care, and management of a cemetery as well as the operation of a crematorium on cemetery grounds.

An association may purchase or receive as a gift up to 300 acres of land within the county of the cemetery or an adjoining county. The land must be used exclusively for burial, cremation, or related purposes.

RELEVANT LINKS:

[Minn. Stat. § 306.05.](#)

[Minn. Stat. § 306.09.](#)

[Minn. Stat. § 306.10.](#)

[Minn. Stat. § 306.05.](#)

[Minn. Stat. § 306.09.](#)

[Minn. Stat. § 306.09.](#)

[Minn. Stat. § 306.10.](#)
Section IV, *Permanent care and improvement funds.*

[Minn. Stat. § 306.14, subd. 1.](#)
[Minn. Const. art. X, § 1.](#)
State v. Lakewood Cemetery Ass'n, 101 N.W. 161 (Minn. 1904). *Grand View Park Cemetery Ass'n v. City of Edina*, 257 N.W.2d 329 (Minn. 1977). *City of New Hope v. Catholic Cemeteries*, 467 N.W.2d 336 (Minn. Ct. App. 1991).

Any land must be surveyed and divided into lots of a size determined by the trustees. Avenues, alleys, and walks must also be surveyed, as necessary. A map of the survey must be filed with the county recorder of the county where the cemetery is located.

a. Gifts to cemetery association

An association may accept a gift of real or personal property to maintain a monument or to keep or improve cemetery grounds. If an association accepts a gift with such conditions, the funds must always be devoted to these uses.

2. Eminent domain

In cases when a cemetery association needs to expand but cannot come to an agreement with adjacent property owners, it may use the power of eminent domain. However, along with consideration of the cemetery boundaries, the association must establish that there is a public necessity, propriety, and convenience that require the addition before using this power.

3. Sale of cemetery lots or property

Trustees may sell or convey designated cemetery lots once the association's survey map is filed with the county recorder. The trustees may create terms, conditions, or restrictions on sales and conveyance as they deem appropriate. The terms must be listed on the lot agreement.

Every conveyance must be expressly for burial purposes and be in the corporate name of the association and signed by its president or vice president and by its treasurer or secretary.

A public cemetery association may sell or convey real or personal property that is not needed for cemetery purposes. The proceeds from lot sales may be invested in a permanent care and improvement fund, or applied solely to the payment of debts incurred in purchasing the cemetery grounds and property, fencing, improvement, or beautification of the cemetery.

C. Tax-exempt status

The property of a public cemetery association is exempt from all taxes and special assessments. This tax-exempt status also applies to land the cemetery owns but is not yet actively using for burial. As long as the land will presumably be used in the future for burial, it is not subject to taxes or special assessments. It may not be sold against an association or any lot owner. Furthermore, no road may be constructed through a cemetery or any part of its lands without the consent of the trustees.

RELEVANT LINKS:

[Minn. Stat. § 306.14, subd. 2.](#)

[Minn. Stat. § 306.155, subds. 1, 3.](#)

[Minn. Stat. § 149A.96, subd. 1.](#)

[Minn. Stat. § 149A.96, subd. 7.](#)

[Minn. Stat. § 149A.96, subd. 5.](#)

[Minn. Stat. § 149A.96, subd. 3.](#)
[Minn. Stat. § 149A.80, subd. 2.](#)

1. Exception to special-assessment exemption

Cemetery associations are generally exempt from special assessments. However, if at least part of the purpose for forming the association is to provide monetary gain for its shareholders and members and it pays dividends or some other monetary remuneration either directly or indirectly to shareholders and members, it is not exempt from special assessments. Most cemeteries are nonprofit organizations and would be exempt from special assessments.

However, there are some private cemeteries that may provide some type of monetary payment to members or shareholders and, thus, would not be exempt from special assessments to cemetery property.

D. Disinterment and reinterment

In the rare situation where an operator of a cemetery is informed or becomes aware that it has interred or permitted the interment of a body or remains in the wrong burial space, the cemetery must disinter the burial container wrongfully interred, identify the burial container, and reinter it in the proper burial space. The only exception is if the interested parties have agreed otherwise in writing. The cemetery is responsible for all costs of the disinterment and reinterment. The cemetery must give reasonable notice, in advance of the disinterment, to the person or persons legally entitled to control the body or remains of the deceased person and, if requested, the owner of the burial space.

Disinterment and reinterment may only occur with (1) the written authorization of the person or persons legally entitled to control the body or remains and (2) a disinterment-reinterment permit properly issued by the commissioner or a licensed mortician. The cemetery where the body or remains were originally interred must retain a copy of the disinterment-reinterment permit, the authorization to disinter, and, if applicable, the court order showing reasonable cause to disinter. Until the body or remains are reinterred, the original permit and other documentation must be in the possession of the person in physical or legal custody of the body or remains, or attached to the transportation container which holds the body or remains. At the time of reinterment, the permit and other documentation must be filed according to the laws, rules, or regulations of the state or country where reinterment occurs.

A disinterment-reinterment permit is not required if the disinterment and reinterment is within the same dedicated cemetery. Under these circumstances, the authorities in charge of the cemetery may disinter and reinter a body or remains within the same dedicated cemetery upon receipt of the written and notarized authorization of the person or persons with the right to control the disposition.

RELEVANT LINKS:

[Minn. Stat. § 306.155, subd. 2.](#)

[Minn. Stat. § 306.41\(b\).](#)
[Minn. Stat. ch. 50.](#)
[Minn. Stat. § 306.44, subd. 1.](#)

[Minn. Stat. § 306.41\(b\).](#)

[Minn. Stat. § 306.41\(a\).](#)

[Minn. Stat. § 306.42.](#)

[Minn. Stat. § 306.44, subd. 1\(a\).](#)

[Accepting Donations](#), LMC
model resolution.
[Minn. Stat. § 465.03.](#)

[Minn. Stat. § 306.43.](#)

At the disinterment and reinterment, the cemetery must permit the person or persons legally entitled to control the body or remains and, if requested, the owner of the burial space to witness the disinterment and reinterment.

IV. Permanent care and improvement fund

The purpose of a permanent care and improvement fund is to provide a means for continual care and improvement of a cemetery. Portions of the sale of burial space are directed to the fund, the interest from which is used to maintain the cemetery.

There is no statutory authority to force current lot owners to contribute to the permanent care and improvement fund if the lot was purchased prior to the establishment of the fund. However, some cemeteries accept voluntary contributions to the fund from such lot owners.

A. Municipal cemeteries

The city council may establish a permanent care and improvement fund, by a unanimous vote, to be deposited or invested in the same securities in which savings banks are allowed to invest. While adoption of a resolution may be sufficient, an ordinance may be better given the perpetual nature of a cemetery permanent care and improvement fund.

However, in order to establish the fund, the cemetery must be at least one-half acre in area, and the plat must be on file with the county recorder.

The principal of the fund may not be spent or dispersed. The interest accrued from the fund may be spent, but only for the care, maintenance, and improvement of the cemetery. The permanent care and improvement fund must not exceed \$25,000 per acre.

1. Payments to the fund

The council may stipulate that any portion of a cemetery lot sale must be deposited as a part of the permanent care and improvement fund, and that the interest accruing from the amount set aside from the lot be used by the board or municipality to care for and beautify the lot. Deposits to the fund must be made on January 1, April 1, July 1, and October 1.

2. Gifts and donations

The city council may, by resolution, accept donations or gifts of money to the permanent care and improvement fund to be used for the purpose specified by the donor. This may include care of a specific lot or general care of the cemetery. If the cemetery lacks funds for the general care of the cemetery, the council or board may use one-fifth of the annual income from any particular lot for general care.

RELEVANT LINKS:

Minn. Stat. § 306.44, subd. 1(a), (c).
Minn. Stat. ch. 50.

Minn. Stat. § 306.44, subd. 1(f).

LMC information memo:
LMCIT Property, Crime, Bond and Petrofund Coverage Guide, Section VI-A, Bond Coverage.

Minn. Stat. § 306.44, subds. 1(c), 2.

Minn. Stat. § 306.54. Minn. Stat. § 306.44, subd. 1(a), (b).
Permanent Care Cemetery Fund, LMC model ordinance.

Minn. Stat. § 306.44, subd. 1(e).

Minn. Stat. § 306.45.

Minn. Stat. § 306.48.

3. Investment of permanent care and improvement fund

The city council may vote to invest the permanent care and improvement fund in the same securities in which savings banks are allowed to invest. The funds must be invested quarterly on January 1, April 1, July 1, and October 1.

The city council must designate some of its members to handle those funds. The designated persons must be bonded by the city. The bond must be at least equal to the total amount of the fund at the time of posting the bond, conditioned upon the faithful discharge of the trust. The bond must be renewed in the amount of the new fund balance on July 1 of each even-numbered year.

The principal of the fund may not be used; only the interest from the fund may be spent or dispersed. Any interest in excess of \$100 that is unused for one year, after becoming available for care, maintenance, or improvement, must be returned to the fund and become a part of the principal.

4. County cemetery fund

For cities in counties under 50,000 in population, the city council may deposit the money belonging to the permanent care and improvement fund into the county treasury. The money must be deposited quarterly on January 1, April 1, July 1, and October 1.

At the time of deposit, the council must file a statement indicating any particular gifts or donations set aside for a specific lot. For each instance, the statement must include the name of the lot owner, name of the donor, and a description of the lot to which the income from the particular amount of the permanent funds is applicable.

The aggregated funds of all the cemeteries in the county that deposit their permanent care and improvement funds with the county constitute the county cemetery fund. This fund is managed and invested by the county commissioners and deposited by the county treasurer. Interest on the fund is due and payable on or about February 1.

a. Investment of county cemetery fund

Upon petition of at least two-thirds of the city councils or governing boards of cemeteries participating in the county cemetery fund and approval of the county attorney, the county commissioners must invest all or part of the county cemetery fund in the same kinds of bonds and securities in which the state permanent school fund may be invested.

RELEVANT LINKS:

[Minn. Stat. § 306.48.](#)

The law as it exists at the time any money is received into this fund controls the investment of the fund, and no subsequent amendment of the law authorizes the investment of any fund differently or in any other class of securities.

[Minn. Stat. § 306.48.](#)

Bonds or other securities in which the fund is invested remain with the county treasurer, and the bond is the security for the proper care of the bonds or other securities and the payment of interest received.

b. Apportionment and payment of interest from county cemetery fund

[Minn. Stat. § 306.44, subds. 1\(c\), 2.](#)

The principal of the permanent care and improvement fund may not be used; only the interest on the fund is available for use. Additionally, a cemetery must use the interest during the year in which it is received or it will be returned as part of the principal of the permanent care and improvement fund.

[Minn. Stat. § 306.50.](#)

On or before February 1 of each year, the clerk or secretary of the board of directors of each cemetery must file a report with the county auditor, showing in detail the amount of interest expended that it received from the county cemetery fund. Unused interest, in excess of \$100, must be re-deposited in the county cemetery fund and added to the principal of the permanent fund credited to the cemetery.

[Minn. Stat. § 306.44, subds. 1\(c\), 2.](#)

[Minn. Stat. § 306.51.](#)

The county auditor apportions the interest payments on or about March 1 to each cemetery participating in the county cemetery fund in proportion to the amount of each cemetery's permanent fund. Funds deposited to the county cemetery fund just before the close of the year, on which no interest has collected, are not considered part of the permanent fund for that apportionment.

[Minn. Stat. § 306.52.](#)

Immediately after apportionment, the county auditor must report to the cemetery secretary the amount of interest due to the cemetery, along with a statement of the total amount of cemetery funds received by the county treasurer during the preceding year, closing on January 1, and a statement of the amount of the cemetery's permanent care and improvement fund.

[Minn. Stat. § 306.53.](#)

On or after March 1, if the council or cemetery board has made its report and deposited any excess interest, the county treasurer must pay to the treasurer of the municipality or the cemetery board its apportioned share of the interest from the county cemetery fund.

[Minn. Stat. § 306.51.](#)

If the legal existence of any religious corporation or association has ended during the year, the interest due is paid to the municipality where the cemetery is located. The city must use this money for care, maintenance, or improvement of the cemetery.

RELEVANT LINKS:

[Minn. Stat. § 306.44, subd. 1\(d\).](#)

[Minn. Stat. §§ 306.31-.39.](#)
[Minn. Stat. §§ 306.76-.79.](#)
[Minn. Stat. § 306.54.](#)

[Minn. Stat. § 306.80.](#)
[Minn. Stat. § 306.40.](#)

[Minn. Stat. § 412.221.](#)
[Maintenance and Use of a Municipal Cemetery](#), LMC model ordinance.
State ex rel. City of St. Paul v. District Court of Ramsey County, 131 N.W. 327 (Minn. 1911). *State ex rel. Oak Hill Cemetery Ass'n v. Harrington*, 209 N.W. 6 (Minn. 1926). *Clifton v. E. Ridgelawn Cemetery*, 4 A.2d 79 (N.J. 1939). *Foster v. Mayor of Beverly*, 53 N.E.2d 693 (Mass. 1944). [Grand View Park Cemetery Ass'n v. City of Edina](#), 257 N.W.2d 329 (Minn. 1977). *Laurel Hill Cemetery v. City and County of San Francisco*, 216 U.S. 358 (1910). *Union Cemetery Ass'n. v. Kansas City*, 161 S.W. 261 (Mo. 1913).

5. Withdrawal and transfer of funds between depository and investments

A city or cemetery association may also choose to deposit a portion of its permanent care fund into the county cemetery fund and invest the other portion. Funds from either the investments or the county cemetery fund may be withdrawn and transferred to the other by resolution. The county treasurer must return any money deposited into the county cemetery fund that the board, by resolution, withdraws.

B. Public cemetery associations

Public cemetery associations are permitted and sometimes required to establish a permanent care and improvement fund. The population size of the county where a public cemetery association is located determines whether or not establishing a permanent care and improvement fund is optional or required. State statutes also establish requirements for investment and reporting on the fund.

V. Regulating cemeteries

There are no general statutory provisions regulating the location, size, or general operation of municipal cemeteries.

However, charter and statutory provisions relating to health and burial of the dead are generally broad enough to permit the enactment and enforcement of police-power measures regulating or prohibiting burial of the dead, establishing of new cemeteries, enlarging existing cemeteries, establishing future interments, and requiring removal of bodies from existing cemeteries. The location and maintenance of cemeteries may also be regulated by zoning and nuisance ordinances.

RELEVANT LINKS:

Scott v. Lakewood Cemetery Ass'n, 208 N.W. 811 (Minn. 1926).

“‘Choices’: Information on the Regulations and Requirements of the Final Disposition of a Dead Human Body in Minnesota,” Minnesota Department of Health (January 2011), for ideas about what types of rules cemeteries can impose.

Scott v. Lakewood Cemetery Ass'n, 208 N.W. 811 (Minn. 1926).

Brown v. Hill, 119 N.E. 977 (Ill. 1918).

[Maintenance and Use of a Municipal Cemetery](#), LMC model ordinance

Brown v. Hill, 119 N.E. 977 (Ill. 1918). *Anderson v. Acheson*, 110 N.W. 335 (Iowa 1907). *Rowley v. Laingsburg Cemetery Ass'n*, 184 N.W. 480 (Mich. 1921). [Erickson v. Sunset Memorial Park Ass'n](#), 108 N.W.2d 434 (Minn. 1961).

[Cemetery Lot License Agreement](#), LMC model contract.

VI. Cemetery rules and regulations

A municipal cemetery or a public cemetery association may establish rules and regulations that provide for the improvement, decoration, and care of lots. However, the rules must be reasonable.

There is no general definition of what is considered “reasonable;” it depends on the facts of each situation. However, the courts have found rules that do not apply uniformly to all owners are unreasonable. Other rules considered unreasonable by the courts include:

- Rules that require lot owners to use cemetery staff for decorating their lot instead of a competent person of their choosing.
- Rules that could cause monuments, markers, or cornerstones of lots that are in reasonably good condition, to be removed or changed without permission of the owners merely for the purpose of beautifying the cemetery.
- Re-platting the cemetery in a way that would change the size of the original lot.

A municipal cemetery may set out such regulations by resolution, ordinance, or policy. However, only an ordinance is ultimately enforceable and, therefore, may be more desirable.

VII. Cemetery lot agreements and lot owner rights

A. Cemetery lot agreements

Nothing exists in state law that explicitly provides what a cemetery lot owner’s interest is, and Minnesota courts have not resolved the issues. However, courts in Illinois, Iowa, and Michigan have adopted the general rule that the owner possesses only the right of burial in the lot, not absolute title to the land. Courts in Minnesota may agree with these decisions.

Since purchasing a cemetery lot is not absolute title to the land, it is sometimes designated as an easement, privilege, or license. Instead of issuing a traditional cemetery lot deed, cities may want to consider issuing a cemetery lot agreement.

RELEVANT LINKS:

[Minn. Stat. § 306.15.](#)

[Minn. Stat. § 306.15\(e\).](#)

[Minn. Stat. § 307.08, subd. 2.](#)

[Minn. Stat. § 306.027.](#)

[Minn. Stat. § 306.027.](#)

[Minn. Stat. § 306.02, subd. 2.](#)

A cemetery lot agreement is a license that restricts use of the lot to burial. A deed could connote absolute title to the land and could potentially be troublesome for a city if challenged in court.

1. Cemetery lot transfers and sales

The original cemetery lot owner, or his or her heir, may sell or convey his or her unused lot to be used for burial purposes to the cemetery or to another person. An agreement of sale or transfer must be filed with the cemetery. The lot sale or transfer agreement must transfer the lot back to the cemetery. In the case of a sale or transfer to another person, the agreement must also request the cemetery issue a new conveyance of the lot directly to the purchaser. The agreement must also include the purchase price of the lot, which may not exceed the price the cemetery would charge for a similar lot. The agreement must be signed and acknowledged by the lot owner and spouse, if any, and the proposed purchaser. A cemetery may charge a transfer and service fee up to \$15 to be paid at the time of filing the agreement.

B. Lot owner rights

Although the lot owner's right to the lot is only an easement, privilege, or license, an owner is able to sue cemetery owners or strangers for disturbing the lot without consent while the lot is used as a cemetery. Consequently, lot owners have rights against invasion by trespassers or by the cemetery itself.

VIII. Merger and transfers of cemeteries

Mergers between cemeteries of all distinctions, including those owned by a cemetery association or corporation, a municipality, a religious corporation, or of a privately-owned cemetery, are permitted. The terms of the merger are set by the cemeteries' governing bodies, board of trustees, or owner. The surviving entity is subject to the laws that apply to that particular type of cemetery ownership.

A merger cannot impair the rights of any third parties, such as lot owners. After the merger, lot owners of the former cemeteries are entitled to the same rights and privileges concerning their lots that were accorded to them under the previous ownership.

A. Transfers to a public cemetery association

Ownership of municipal cemetery land may be transferred by deed, with or without conditions, to a public cemetery association. The transfer agreement should be drafted by the city attorney.

RELEVANT LINKS:

[Minn. Stat. § 306.06.](#)

[Minn. Stat. § 306.025, subd. 1.](#)

[Minn. Stat. § 306.025, subd. 3.](#)

[Minn. Stat. § 412.211.](#)

[A.G. Op. 870j \(June 2, 1959\).](#)

[Minn. Stat. § 306.246.](#)
[Minn. Stat. § 410.01.](#)
[Minn. Stat. § 471.84.](#)

As a part of the transaction, the city may enter into a contract or agreement with the cemetery association to provide for the management and maintenance of the cemetery, for the sale of lots or land in the cemetery, and for those other matters concerning the care and control of the cemetery as the city sees necessary.

In cities where land has been devoted, without restriction, to public cemetery purposes since 1870, the city council may convey the land to a public cemetery association organized to acquire land for cemetery purposes. In these transfers, the city determines the terms of the transfer.

B. Transfers to a city

Any public cemetery association owning cemetery lands at least partially located within a city may transfer ownership of the lands, along with other funds and property, to that city. The city may accept the transfer and continue to maintain and operate the cemetery. Any funds received in the transfer will be administered by the city for the same purposes and upon the same trusts for which they were originally established. Before the transfer is made, the city must first adopt a resolution.

A city may also be able to accept a transfer of ownership from a public cemetery association located wholly outside of city limits. Since cities are authorized in statute to purchase real or personal property outside of the city for purposes the city requires, it seems likely a transfer of cemetery lands to be used for the burial of city residents would be permissible. Furthermore, the state attorney general has added that a public cemetery association, if established prior to 1906, may transfer its ownership of lands to a city, even if outside city limits.

IX. Cemetery abandonment

Increasingly, cities are encountering cemeteries that have been abandoned by their incorporating associations or corporations. An abandoned cemetery can quickly become a nuisance when graves and the land are not maintained. The area can become vulnerable to criminal activity. To prevent or mitigate this situation, many cities appropriate funds to maintain the cemetery and ultimately clear the title to gain legal rights to the cemetery.

Cities are authorized to disburse funds for the general maintenance of an abandoned or neglected cemetery. Likely, statutory cities and fourth-class cities would have to factor any funds disbursed to this cemetery into their overall limit of \$10,000 per year for all cemeteries. However, there appears to be no limit on how long a city may provide for an abandoned cemetery, so feasibly a city council could disburse funds indefinitely.

RELEVANT LINKS:

[Minn. Stat. § 306.243, subds. 1, 4.](#)
[A.G. Op. 870 \(Aug. 6, 1957\).](#)
[Minn. Stat. § 306.246.](#)
[Minn. Stat. § 306.243, subd. 5.](#)

[Minn. Stat. § 508.03\(6\).](#)

[Minn. Stat. § 508.06.](#)

[Minn. Stat. § 508.11.](#)

[Minn. Stat. § 508.13.](#)

[Minn. Stat. § 508.15.](#)

[Minn. Stat. § 508.16.](#)

[Minn. Stat. § 508.17.](#)

A. County takeover

To gain legal title to the cemetery, a city may ask the county to take over the cemetery and maintain it for one year. Counties are given express authority to take over and maintain an abandoned cemetery, whereas cities only have the authority to disburse funds for maintenance. After one year, the county may transfer the cemetery to the city. This is perhaps the least complicated option; however, it relies on the county's willingness to take on the control of the cemetery.

B. Title registration in Torrens system

A city may also obtain title to an abandoned cemetery by registering the title under the Torrens system. Torrens law is intended to establish an indefeasible title that is free from any rights or claims not registered with the register of titles. In the case of an abandoned cemetery, it would clear the title.

Registration can be a complex court proceeding, and the city should consult its city attorney for assistance. To register title, a city must pass a resolution to register the title of the cemetery before the clerk and mayor apply on behalf of the city.

The application must be in writing and approved by the examiner of titles before filing with the district court administrator.

As soon as possible after filing the application with the court administrator, the city must submit an abstract title of the land described in the application. In some cases, the title examiner may require the city to have a land survey of the cemetery. In such cases, the city is then required to file a plat of the land resulting from the survey with the court administrator. A certified copy of the application is filed with the country recorder and serves as notice of pending action.

The examiner of titles will then review the application and related documents, identify the legal and factual issues, and prepare a recommendation to the court of the necessary parties to be joined as defendants to adjudicate the matter. A copy of this report is given to the city, and the city must comply with it.

Once all of the requirements of the title examiner's report are met, the city files a petition for a summons with the court administrator. The court will examine the files and records of the case and issue the summons.

The summons requires defendants (possible parties with interest or claim to the title) to appear and provide an answer to the application of the city within 20 days of service.

RELEVANT LINKS:

[Minn. Stat. § 508.16.](#)

Additionally, any party claiming an interest in the title, even if they are not listed on the summons, may file an answer in the case.

[Minn. Stat. § 508.16.](#)

The service of the summons must follow the Minnesota Rules of Civil Procedure, and the city is responsible for the cost. The required form of the summons is provided in statute.

[Minn. Stat. § 508.16.](#)

A diligent search for defendants or their heirs must be done. However, if the defendants cannot be found, are unknown, or are not residents of Minnesota, publication of the summons suffices as service.

[Minn. Stat. § 508.16.](#)

The summons must be published at least once a week for three consecutive weeks in a newspaper published and printed in the same county as the application to register the title was filed.

[Minn. Stat. § 508.19.](#)

Additionally, if the title in question has not been registered before, which is likely in the case of a cemetery, the summons must be published in the newspaper. Again, the newspaper must be published and printed in the same county as the application was filed in, and run at least once a week for three consecutive weeks.

[Minn. Stat. § 508.22.](#)

Once the time for answering the summons has expired, no person has appeared, and the court is satisfied with proof of the city's right to the title, the court may issue a decree confirming the title of the applicant and ordering its registration. The decree of registration binds the land to the city and clears the title. The city is thus the legal owner of the cemetery.

C. Quiet title action

[Minn. Stat. § 559.01.](#)

The city may also bring an action in court to settle any adverse claims to the land and clear the title. This is sometimes referred to as quiet title action. This process is often complex and the city should consult its city attorney if exercising this option.

[Minn. Stat. § 559.02.](#)

When the city files the claim with the court, the filings must include the title and the names of any persons or heirs that are known or appear of record to have some right, title, estate, interest, or lien on the property. The city must also include the following statement: "Also all other persons unknown claiming any right, title, estate, interest, or lien in the real estate described in the complaint herein."

[Minn. Stat. § 559.02.](#)

Summons for the proceedings must be issued to any and all known persons with a valid interest in the property. The summons is served in person to those who are still living in the state. For those persons who are unknown or cannot be found with a reasonable diligent search, the service of summons may be made by publication in the newspaper. The newspaper must be printed and published in the county where the action was filed and must run at least once a week for three consecutive weeks.

[Minn. Stat. § 508.16.](#)

RELEVANT LINKS:

[Minn. Stat. § 559.02.](#)

[League of Minnesota Cities
Research Service.](#)

[Minnesota Association of
Cemeteries.](#)

Prior to publication, the city must file a notice of the pending action with the county recorder. If no person with valid interest or right to the land contests the city's claim to the cemetery, the court will issue an order quieting all adverse claims to the land. The city then records the order in its records as proof of title to the cemetery.

X. Conclusion

Cemeteries provide an important service for communities. However, many issues and requirements factor into the establishment, care, and maintenance of a cemetery. For additional information not included in this memo, please contact the League of Minnesota Cities Research Service or the Minnesota Association of Cemeteries.