

Township Cemetery Ordinance

**BANKS TOWNSHIP
ANTRIM COUNTY, MICHIGAN**

Ordinance No. 1 of 2021

As amended March 29, 2023

An ordinance to protect the public health, safety, and general welfare by establishing regulations relating to the operation, control, maintenance, and management of cemeteries owned, controlled or operated by the Township of Banks, in Antrim County, Michigan; to provide penalties for the violation of said ordinance, and to repeal all ordinances or parts of ordinances in conflict therewith.

THE TOWNSHIP OF BANKS, COUNTY OF ANTRIM, MICHIGAN ORDAINS:

Section 1. Title

This Ordinance shall be known and cited as the "Banks Township Cemetery Ordinance."

Section 2. Purpose and Intent

The Banks Township Board recognizes and concludes that the proper and reasonable maintenance, appearance and use of the cemeteries owned and controlled by the Township is an important function of the government of the Township. It is also important that burials, disinterments and other matters associated with a municipal cemetery are handled in a respectful and proper way in order to promote the safety, public health and general welfare of the community. The Township Board finds that the adoption and enforcement of this Ordinance is in the best interests of the property owners and residents of the Township.

Section 3. Definitions

- (a) A "burial space" shall consist of an area in a Township cemetery, including within a mausoleum, sufficient to accommodate one burial space for one deceased person.
- (b) A "burial permit" is a permit issued to allow burial in a Township cemetery in a specified burial space.
- (c) A "cemetery deed" or "burial space certificate" is a form issued by the Township to the purchaser of a burial space within a Township cemetery.
- (d) "Infant" means someone who is two years or younger at the time of death.
- (e) "Township" means Banks Township.
- (f) "Township cemetery" or "cemetery" means any cemetery owned, operated and/or controlled by the Township.
- (g) "Township Clerk" means the elected Township Clerk and/or other designee(s) of the township board.
- (h) "Atwood Cemetery" is the cemetery located on Church Road, Section 17, R8W of Banks Township.
- (i) "Antrim City Cemetery" is the cemetery located on Old Dixie Hwy, Section 14, R9W of Banks Township.
- (j) "Catholic Cemetery" is the cemetery located on US 31, Section 24, R9W of Banks Township.
- (k) "Ellsworth Cemetery" is the cemetery located on Eaton Road, Section 14, R8W of Banks Township.
- (l) "Cemetery Sexton" means the person charged with selling burial sites to the public, recording those sales, recordkeeping related to burials, transfer of ownership of burial sites, etc.; also, to oversee the opening and closing of graves and care of the grounds at the cemeteries.
- (m) "Mausoleum" means a building constructed of granite or marble for the interment of a deceased person above ground.

Section 4. Sale of Cemetery Burial Spaces; Limited Transfers

- (a) After the effective date of this Ordinance, cemetery burial spaces shall be sold by the Township for the purpose of burial for the purchaser of a burial space, or his or her immediate family. No sale shall be made to funeral directors or others, except for those acting as an agent for an eligible purchaser.
- (b) All sales and transfers of burial spaces shall be recorded on a form approved by the Township Board, which grants a right of burial only and does not convey any other title or right to the burial space sold. Such forms shall be signed by the Cemetery Sexton and shall then constitute a "cemetery deed" or "burial space certificate".
- (c) Burial spaces may be sold by the Township to any resident or taxpayer of the Township. The Township Clerk is hereby granted the authority to vary the aforesaid restriction on sales where the purchaser discloses sufficient personal reason for burial within the Township through previous residence in the Township or relationship to persons interred in the Township cemetery involved. Any such decision by the Township Clerk (either granting or denying such variance) may be overturned by the Township Board pursuant to Section 23 hereof. Non-residents or Non-Property Owners may purchase burial spaces at a higher sales price as described in Section 5a.
- (d) Except as provided herein, ownership of burial spaces is nontransferable, but may be sold back to the township at the price paid (for resale by the Township). Provided, however, if the owner of burial spaces submits a written, notarized request to the Cemetery Sexton requesting that the burial spaces be transferred to a named family member, then those burial spaces shall be transferred as requested. The Cemetery Sexton shall then cancel the old cemetery deed or burial space certificate in the Township cemetery records and issue a new burial space certificate in the name of the new owner.
- (e) The Township Board shall have the authority to place a limit on the number of burial spaces to 8 spaces sold to an individual household. Appeals to this section of the ordinance may be made to the Township Board which will have the authority to override the limitation based upon circumstances presented by the household.
- (f) The Township shall have the right to correct any errors that may be made concerning interments, disinterments, or in the description, transfer or conveyance of any burial space, either by canceling the burial space certificate for a particular vacant burial space or spaces and substituting and conveying in lieu thereof another vacant burial space or spaces in a similar location within the cemetery at issue or by refunding the money paid for the burial space to the purchaser or the successor of the purchaser. In the event that an error involves the interment of the remains of any person, the Township shall have the right to remove and transfer the remains so interred to another burial space in a similar location in the same Township cemetery in accordance with law.
- (g) The owner of every burial space shall be responsible for notifying the Township whenever that person's mailing address changes.

Section 5. Purchase Price for Burial Spaces

- (a) Burial Spaces may be sold individually or in groups of up to 8 spaces.
- (b) The lawful owner of any burial space within the Township shall promptly provide the Cemetery Sexton with any change in that owner's mailing address.
- (c) The Township Board shall determine from time to time by resolution the sale price for purchase of burial spaces by residents/ property owners with a separate sale price for purchase of burial spaces by non-residents/non-property owners.
- (d) All charges shall be paid to the Township.

Section 6. Grave Opening; Charges

- (a) The Township Board shall from time to time by separate resolution establish the fee for the opening and closing of a burial space, prior to and following a burial therein, including the interment of cremains.
- (b) The fee established pursuant to subsection (a) above shall be paid to the funeral director who will contract with a person to open and close the grave following burial.
- (c) The opening and closing of graves shall be done by the Funeral Home designee under the direction and control of the Cemetery Sexton. However, this provision shall not apply to proceedings for the removal and re-interment of bodies and remains that are under the supervision of the local or state health department authorities.

- (d) In any event, however, the Cemetery Sexton shall be given at least twenty-four (24) hours prior notice of when such grave opening or closing will occur.

Section 7. Markers, Memorials, Monuments, and Mausoleums

- (a) All markers, memorials, and monuments must be comprised of stone or other equally durable composition and shall face the same direction as the markers, memorials, and monuments around them.
- (b) Except for markers, memorials, and monuments that existed in a Township cemetery before the effective date of this Ordinance, no monument larger than 36 inches wide, or 54 inches wide for a double marker on two adjoining burial spaces, will be allowed or erected in a cemetery. Only one (1) marker, memorial, or monument shall be permitted per burial space, or one marker, memorial, or monument in total where two adjoining spaces share that one marker, memorial, or monument with the exception of Veteran's markers that may be affixed to the back side of a regular marker or mounted flush with the ground if the family chooses to use both.
- (c) A concrete foundation with two (2) inch extension on each side of the marker, memorial, or monument is required.
- (d) Mausoleums shall only be permitted in the Atwood Cemetery and Ellsworth Cemetery. All mausoleums in those cemeteries shall be limited to 1-person or 2-person mausoleums. No mausoleum shall be placed in either cemetery without first obtaining written authorization from the cemetery sexton for such placement.
- (e) All mausoleums shall face the same direction as the markers and memorials around them.
- (f) No mausoleum shall have a height of more than 42 inches, measured from the ground to the highest point of the mausoleum.
- (g) A 1-person mausoleum shall be placed on a single burial space within the cemetery. A 2-person mausoleum shall be placed on adjacent burial spaces within the cemetery.
- (h) If more than one 2-person mausoleum or more than one 1-person mausoleum are placed in a cemetery at the same time, then the multiple mausoleums shall be placed as close together as possible to each other and on a single concrete foundation and shall be subject to the requirements of subsection (i) below.
- (i) A concrete foundation sufficient in design and size to support the weight of the mausoleum shall be required. Before construction of the foundation and the placement of the mausoleum in the cemetery, the individual who desires to place the mausoleum shall submit to the cemetery sexton the design and construction specifications for the mausoleum and foundation. The cemetery sexton shall have the right, at the sole expense of the individual who desires to place the mausoleum, to have the design and construction specifications for the mausoleum and foundation reviewed by an engineer or other qualified expert for the purpose of determining whether the proposed mausoleum complies with the requirements of this Ordinance and the proposed foundation is sufficient in design and size to support the weight of the mausoleum. The individual who desires to place the mausoleum shall reimburse the Township for all expenses incurred by the Township for such review before obtaining the burial permit or written authorization from the cemetery sexton for the placement of the mausoleum in the cemetery.
- (j) Except as provided herein, the maintenance, repair and upkeep of a mausoleum and a cemetery memorial, marker, urn or similar item is the responsibility of the heirs or family of the person interred at that location. A person who installs and/or constructs a mausoleum and/or a cemetery marker, memorial, monument, urn or similar item shall after the construction and/or installation restore the grounds on and surrounding the burial space on which the item was placed to the same or better condition as existed before such construction and/or installation. The Township has no responsibility or liability regarding the repair, maintenance, or upkeep regarding any such mausoleum, marker, memorial, monument, urn, or similar item.

Section 8. Interment Regulations

- (a) Only one (1) person shall be buried in a burial space, except for a parent and infant child or two (2) infants buried at the same time when approved by the Township. Exception to this is burial of cremains: two burials of cremains are allowed in one burial space provided only one marker is placed.
- (b) The Cemetery Sexton shall be given not less than twenty-four (24) hours prior notice in advance of any funeral. The opening and closing of burial spaces shall be done only by the Funeral Home designee.
- (c) The burial space certificate for the burial space involved, together with the identification of the person to be buried, shall be presented to the Cemetery Sexton prior to interment. A form for such notification can be found on the Township's website. Where such burial space certificate has been lost or destroyed, the Cemetery Sexton shall be satisfied from a review of the official cemetery records that the person to be buried in the burial space is eligible for burial in that burial space before any interment is commenced or completed. Once the Cemetery Sexton is satisfied that the person to be buried in the burial space has a legal right to such burial, then he or she shall issue a burial permit for such interment.
- (d) The surface of all graves shall be kept in an orderly and neat-appearing manner within the confines of the burial space involved. Solar lights and other decorations, if used, must be kept in line with markers to avoid trip hazards.

Section 9. Winter Burials

No winter burials shall occur without the prior consent of the Cemetery Sexton.

Section 10. Cremains

- (a) Except when the cremains urn is itself lined with concrete sufficient in strength to support the earth above the urn, cremains shall be buried in a concrete urn vault approved by the Cemetery Sexton in a burial space within a Township cemetery.
- (b) Burial of cremains will be coordinated with the Cemetery Sexton to assure proper location of the burial and proper recordkeeping. No cremains shall be scattered or dispersed within a Township cemetery.
- (c) Up to two cremains may be buried in one burial space. One marker is allowed per burial space.

Section 11. Grounds Maintenance

- (a) Flowerpots, urns, and grave blankets may be placed and maintained at the head stones of graves no earlier than May 1 and must be removed no later than October 1 of each year. Decorations will be permitted for holidays falling outside of these dates, but only for one (1) week prior and one (1) week following the holiday. Veteran flags and flag holders shall be governed by the Veteran's Administration rules and guidelines.
- (b) No grading, leveling, or excavating within a cemetery shall be allowed without the prior permission of the Cemetery Sexton. Furthermore, no tree, shrub, landscaping, or similar plantings shall occur without the prior permission of the Cemetery Sexton.
- (c) The Township Board reserves the right to remove or trim any existing trees, plants or shrubs located within a cemetery in the interest of maintaining proper appearance and the use of the cemetery.
- (d) Mounds, bricks, blocks, and any borders that hinder the free use of a lawn mower or other gardening apparatus are prohibited.
- (e) The Cemetery Sexton and his/her designees shall have the right and authority to remove and dispose of any and all growth, emblems, displays, containers and other items that through decay, deterioration, damage or otherwise become or are unsightly, a source of litter or a maintenance problem.
- (f) Surfaces other than earth or sod are prohibited.
- (g) All refuse of any kind or nature including, but not limited to, dried flowers, wreaths, papers, and plastic flower containers must be removed from the cemetery within 14 days after a burial.
- (h) No glass containers or items are allowed.
- (i) Except for markers, memorials, flowers, and urns expressly allowed by this Ordinance, and veteran flags as authorized by law, no other item (including, but not limited to, ornaments, signs, trellises, statues, benches, landscaping, bricks, stones, grave border materials or other structures) shall be installed or maintained within a Township cemetery, nor shall any grading, digging, mounding or similar alteration of the ground or earth occur except as authorized by this Ordinance.

Section 12. Disclaimer of Township Liability and Responsibility

Every person who enters, remains in and travels within a Township cemetery does so at their own risk. The Township is not responsible for any injury, accident or other calamity that might occur to any person present in a Township cemetery. Furthermore, the Township is not responsible for any damage or vandalism to, theft of or deterioration of any burial monument, headstone, flower urn or other item placed at or near a burial space, burial site or anywhere in a Township cemetery. The purchaser or transferee of any burial space or the equivalent (and all subsequent transferees, assigns, heirs, or beneficiaries) hereby releases, waives, indemnifies, and holds harmless the Township for, from and against any injury, damages, causes of action, claims, costs and expenses associated with, relating to and/or involving the burial space or similar right, any headstone, monument or similar items, and any matter related to the cemetery involved. Such waiver, release and hold harmless provision shall apply not only to the Township, but also as to the Cemetery Sexton and any Township employee, officer, official or agent.

Section 13. Forfeiture of Vacant Burial Spaces

Burial spaces remaining vacant for forty (40) years or more from the date of their sale shall automatically revert to the Township upon the occurrence of the following events:

- (a) Notice shall be sent by the Township Clerk by first-class mail to the last known address of the last owner of record informing him/her of the expiration of the 40-year period and that all rights with respect to said burial spaces will be forfeited if he/she does not affirmatively indicate in writing to the Township Clerk within sixty (60) days from the date of mailing of such notice of his/her desire to retain such burial rights; and
- (b) No written response to said notice indicating a desire to retain the burial spaces in question is received by the Township Clerk from the last owner of record of said spaces, or his/her heirs or legal representative, within sixty (60) days from the date of mailing of said notice.

Section 14. Repurchases of Burial Spaces

The Township may repurchase any unused burial space from the owner for the price paid, upon the written request of said owner or his or her legal heirs or representatives.

Section 15. Records

The Cemetery Sexton shall maintain records concerning all burials, burial spaces, and any other records of the Township related to Township cemeteries, and the same shall be open to public inspection at all reasonable business hours.

Section 16. Vaults

All burials shall be within a standard concrete vault (which meets all applicable laws) installed or constructed in each burial space before interment.

Section 17. Cemetery Hours

Unless otherwise specified by the Township Board by resolution, all Township cemeteries shall be closed during the hours from dusk until dawn. During those hours, no person shall be present in a Township cemetery. Such prohibition on being present in a Township cemetery during the time when a Township cemetery is closed shall not apply to the Cemetery Sexton, any Township official, a person accompanied by the Cemetery Sexton or other Township official, or any law enforcement or firefighting official when engaged in the lawful duties of any such office or position.

Section 18. Prohibited Uses and Activities

The following prohibitions shall apply within any Township cemetery:

- (a) No person shall disturb the peace or unreasonably annoy, harass or disturb any other person who is lawfully present on the grounds of any Township cemetery.
- (b) There shall be no disturbing of the peace or engaging in any loud or boisterous conduct, including music, playing of any radio, or the use of any amplification device or similar item, except pursuant to a military ceremony or a funeral.
- (c) There shall be no digging, grading, or mounding unless expressly authorized by this Ordinance.
- (d) There shall be no driving of an automobile, truck, or any motorized vehicle on any portion of a cemetery except the designated roads or drives. Speed limit within the cemeteries is 5 MPH.
- (e) There shall be no disinterment or grave openings unless approved by the Cemetery Sexton, or by order of a court of competent jurisdiction or the local or state health department authorities.
- (f) There shall be no possession or consumption of any alcoholic beverage.

- (g) There shall be no solicitation or peddling of services or goods or any signs or placards advertising any goods or services.
- (h) There shall be no littering or dumping.
- (i) There shall be no interference with or disruption of a funeral or funeral procession.
- (j) There shall be no private signs, lighting, moving displays or changeable copy on a sign.
- (k) There shall be no fires, candles, or open flames.
- (l) No children under twelve (12) years of age shall be allowed in any Township cemetery unless accompanied by an adult and are properly supervised by an adult.
- (m) No firearms or archery arrows shall be discharged or shot except that military or other veterans' organizations may carry arms for the purpose of firing over the grave at the burial of a member.
- (n) No person shall engage in any fight, quarrel, or disturbance.
- (o) There shall be no dumping, vandalizing, or tipping over of any garbage container or receptacle.

Section 19. Authority of the Cemetery Sexton

- (a) The Township Board shall appoint a Cemetery Sexton. This person may be Township employee or independent contractor for the Township and serves at the discretion of the Township Board.
- (b) The Cemetery Sexton shall assist other Township officials with the enforcement and administration of this Ordinance.
- (c) The Cemetery Sexton shall have such duties and obligations regarding Township cemeteries as described within the definitions and may be modified from time to time by the Township Board.

Section 20. Fees

The Township Board shall have the authority to set fees pursuant to this Ordinance from time to time by resolution. Such fees can include, but are not limited to, a fee or fees for a burial permit, disinterment permit, grave opening, setting of foundations, grave closing, winter or holiday burial, the price for a new burial space, transfer fees for burial spaces, and other matters. Any check for fees pursuant to this Ordinance should be made out to the Township or the Township Treasurer and not to the Cemetery Sexton or any other individual Township employee.

Section 21. Applicability of this Ordinance

- (a) This Ordinance shall apply only to cemeteries owned, controlled, or operated by the Township.
- (b) The provisions of this Ordinance shall not apply to Township officials or their agents or designees involved with the upgrading, maintenance, administration, or care of a Township cemetery.
- (c) The provisions of this Ordinance shall not apply to police officers or firefighting officials or officers involved in carrying out their official duties.

Section 22. Interpretation/Appeals to the Township Board

- (a) When an ambiguity exists in any clause, provision, or regulation contained in this Ordinance or an ambiguity exists in the application of any clause, provisions, or regulations within this Ordinance to a particular set of circumstances, the Township Board shall have the authority to render binding interpretations of that ambiguous clause, provision, or regulation or the ambiguous application of that clause, provision, or regulation. When exercising this interpretation authority, the Township Board shall be bound by the legal rules of statutory construction applicable to the interpretation of municipal ordinances. In addition, the Township Board shall have the authority to waive application of the strict letter of any provision of this Ordinance when the Board finds there would be practical difficulties in carrying out the strict letter of this Ordinance or that carrying out the strict letter of this Ordinance would result in undue hardship to a particular person or persons or the public. Any such waiver, however, shall not be of a recurring nature. In such an event the Township Board shall amend this Ordinance to address the situation.
- (b) Any party aggrieved by any interpretation or decision made by the Cemetery Sexton or any Township official, agent, or contractor pursuant to this Ordinance, as well as any matter relating to a Township cemetery, rights to a burial space, or other matter arising pursuant to this Ordinance, shall have the right to appeal that determination/decision or matter to the Township Board. Any such appeal shall be in writing and shall be filed with the Township Clerk within thirty (30) days of the date of the decision, determination or other matter being appealed from. The Township shall give the aggrieved party who filed the written appeal with the Township at least ten (10) days' prior written notice of the meeting at

which the Township Board will address the matter unless an emergency is involved, in which case the Township shall utilize reasonable efforts to notify the aggrieved party who filed the appeal of a special or emergency meeting of the Township Board at which the matter will be addressed. Pursuant to any such appeal, the decision of the Township Board shall be final.

(c) The Township Board may set a fee or fees for any such appeal from time to time by resolution.

Section 23. Authority of the Township to Remove Unauthorized or Unlawful Items from a Township Cemetery

Any monument, marker, planting, trellis, personal item, urn, flowers or foliage (whether real or artificial), structure, flag (except for lawful veterans flags), or other item that has been placed, installed, left or maintained in any Township cemetery in violation of this Ordinance, any Township rule or regulation regarding Township cemeteries, or any county, state or federal law, statute or regulation may be removed or ordered to be removed by the Cemetery Sexton from the Township cemetery at any time and destroyed or disposed of by the Township without any prior notice to, permission from, or liability or obligation to the person or persons who left, installed, maintained or kept such item in the Township cemetery. No such item (including, but not limited to, a monument, marker, planting, trellis, personal item, urn, flowers or foliage, structure, flag, or similar item) can be installed, placed, maintained, or kept in a Township cemetery unless expressly authorized by this Ordinance or a written rule or policy of the Township. Even if such an item is authorized to be installed, kept, maintained, or left in a Township cemetery, the Cemetery Sexton shall still have the discretion to remove any such item at any time and dispose of the same without prior notice to, consent from or liability to the person or persons who installed, maintained or left such item in a Township cemetery.

Section 24. Penalties

Any person who violates any provision of this Ordinance, including any permit or permit condition issued pursuant to this Ordinance, shall be responsible for a municipal civil infraction as defined in Public Act 12 of 1994, amending Public Act 236 of 1961, being Sections 600.101-600.9939 of Michigan Compiled Laws, and shall be subject to a fine of not more than Five Hundred and 00/100 (\$500.00) Dollars. Each day this Ordinance is violated shall be considered as a separate violation. Any action taken under this Section shall not prevent civil proceeding for abatement or termination of the prohibited activity.

Section 25. Township Officials Who Can Enforce this Ordinance

The Cemetery Sexton, Township Supervisor, and other individuals appointed by the Township Board are hereby designated as the authorized township officials to issue municipal civil infraction citations directing alleged violators of this Ordinance to appear in court.

Section 26. Severability

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

Section 27. Repeal

All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed in their entirety.

Section 28. Effective Date

This Ordinance shall become effective thirty (30) days after being published in a newspaper of general circulation within the Township.

Amendments were made to this ordinance with Ordinance #1 or 2023 and this version includes those amendments.

Amendment Date: March 29, 2023

Effective Date: April 7, 2023

Certified By _____, Donna L. Heeres, Banks Township Clerk