

## BIG CREEK TOWNSHIP ORDINANCE NO. 16

AMENDED – 2012

AN ORDINANCE TO PROTECT THE PUBLIC HEALTH, SAFETY AND GENERAL WELFARE BY ESTABLISHING REGULATIONS RELATING TO OPERATION, CONTROL AND MANAGEMENT OF CEMETERIES OWNED BY THE TOWNSHIP OF BIG CREEK, OSCODA COUNTY, MICHIGAN; TO PROVIDE PENALTIES FOR THE VIOLATION OF SAID ORDINANCE; AND TO REPEAL ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH.

TOWNSHIP OF BIG CREEK, COUNTY OF OSCODA, MICHIGAN ORDAINS:

### Section 1: TITLE

This ordinance shall be known and cited as the Big Creek Township Cemetery Ordinance.

### Section 2: DEFINITIONS OF CEMETERY LOTS AND BURIAL SPACES

A "cemetery lot" shall consist of an area in the Township cemetery sufficient to accommodate one burial space for one deceased person. Exceptions may be made with Township permission to accommodate infant burial or the burial of cremains.

### Section 3: SALE OF RIGHT OF INTERMENT OR BURIAL SPACES

- A. Residents or taxpayers of the Township may purchase rights of interment or burial spaces for themselves, their heirs, or next of kin in the Township cemetery. No sale shall be made to funeral directors. The Township clerk is authorized to vary the 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 therein, but at the determined non resident rate.
- B. All such sales shall be made on a form approved by the township board, which grants a right of burial only and does not convey any other title to the lot or burial space. Such form shall be executed by the township clerk.
- C. Burial rights may only be transferred to those people eligible to be original purchasers of cemetery lots or burial spaces within the township and may be affected only by endorsement of an assignment of such burial permit upon the original burial permit issued by the township clerk, approved by said clerk, and entered upon the official records of said clerk. Upon such assignment, approval and record, said clerk shall issue a new burial permit to the assignee and shall cancel and terminate upon such records, the original permit thus assigned.
- D. The owner of every cemetery lot (plot) shall be responsible for notifying the Township whenever that person's mailing address changes.
- E. 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 cemetery

plot, either by canceling the permit for a particular vacant cemetery plot or plots and substituting and conveying in lieu thereof another vacant cemetery plot or plots in a similar location within the cemetery at issue or by refunding the money paid for the cemetery plot 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 cemetery plot in a similar location in the same Township cemetery in accordance with law.

#### Section 4: **PURCHASE PRICE AND TRANSFER FEES**

- A. The Township Board by resolution may periodically alter the foregoing fees to increased costs and needed reserve funds for cemetery maintenance and acquisition.
- B. The Township Board may waive some or all fees for the burial of **unclaimed bodies**. Furthermore, the Township Board may set aside a portion of a Township cemetery or cemeteries for the burial of indigent persons.
- C. The foregoing charges shall be paid to the Township Treasurer and shall be deposited in the cemetery fund of the Township.

#### Section 5: **GRAVE OPENING CHARGES**

- A. The opening and closing of any burial space, prior to and following a burial therein, and including the interment of ashes, shall be at a cost to be determined from time to time by resolution of the township board, payable to the township.
- B. No burial spaces shall be opened and closed except under the direction and supervision of the cemetery sexton. This provision shall not apply to proceedings for the removal and re-interment of bodies and remains, which matters are under the supervision of the local health department.

#### Section 6: **MARKERS OR MEMORIALS**

- A. A permit must be obtained from the township clerk prior to the placing of any marker or memorial on a grave site.
- B. All markers or memorial must be comprised of stone or other equally durable composition and shall face the same direction as the markers and memorials around them.
- C. Except for monuments that existed in a Township cemetery before the effective date of this Ordinance, no monument will be allowed or erected in a cemetery. For purposes of this Ordinance, "monument" shall be defined as any marker, memorial, statue or similar item which exceeds thirty-six (36) inches in height above normal ground level, or which has a ground surface area exceeding thirty-six (36) inches in width or sixty (60) inches in width for a double marker, with an overall height of no more than thirty-six (36) inches above ground level, including the foundation. Only one (1) marker or memorial shall be permitted per cemetery plot, or one marker or memorial in total where two adjoining plots share that one marker or memorial. **Exception would be a flush mount marker for veterans or cremains.**

- D. Markers shall be no more than thirty-six (36) inches in width (or sixty (60) inches in width for a double marker), with an overall height of no more than thirty-six (36) inches above ground level, including the foundation. Individual markers for cremains shall be flush with the ground and shall be no more than twelve (12) inches by twenty-four (24) inches in size. Any deviations from these maximum sizes must be approved by the Township Board.
- E. The footing or foundation upon which any marker or memorial must be placed shall be constructed by the Township, or such person(s) as may be designated by the Township Board. Fees for such work shall be set from time to time by resolution of the Township Board, payable to the Township.
- F. Should any monument or memorial (including any monument or memorial that was in place before this Ordinance became effective) become unsightly, broken, moved off its proper site, dilapidated or a safety hazard, the Township Board shall have the right to correct the condition or remove the same. The Township shall make reasonable attempts to contact the owner of the cemetery plot prior to any such work beginning.
- G. The maintenance, repair and upkeep of a cemetery memorial, marker, urn or similar item are the responsibility of the heirs or family of the person buried at that location. The Township has no responsibility or liability regarding the repair, maintenance or upkeep regarding any such marker, memorial, urn or similar item.

#### Section 7: **INTERMENT REGULATIONS**

- A. Only one person may be buried in a burial space except for **an adult and infant or one cremains**, or two children being buried at the same time.
- B. Not less than a 36 hour notice shall be given in advance of any interment to allow for the opening of the burial space.
- C. The appropriate permit for the burial space involved, together with appropriate identification of the person to be buried therein, where necessary, shall be presented to either the cemetery sexton or the township clerk prior to interment. Where such permit has been lost or destroyed, the township clerk shall be satisfied, from his or her records, that the person to be buried in the burial space is an authorized and appropriate one before any interment is commenced or completed.
- D. **All burials except for cremains must be overseen by a licensed funeral director.**
- E. All graves shall be located in an orderly and neat appearing manner within the confines of the burial space involved.

#### Section 8: **DISINTERMENTS**

- A. No disinterment or the digging up of an occupied grave shall occur without a **valid** disinterment permit.
- B. No disinterment or digging up of an occupied grave shall occur until and unless any and all permits, licenses and written authorizations required by law for such disinterment or digging up of an occupied grave have been obtained from any applicable state or county agency, governmental unit or official, and a copy of the same has been filed with the Township.

- C. The Township Board shall have the authority to refuse to allow a disinterment or the digging up of an occupied grave if the disinterment or digging up of an occupied grave is not done pursuant to a court order (issued by a court of competent jurisdiction) or does not have a reasonable basis.
- D. No disinterment permit **shall be accepted by the Township** until the proper disinterment application form has been fully completed (and signed by a properly authorized person) and filed with the Township.
- E. No burial spaces shall be opened and closed except under the direction and supervision of the township cemetery sexton. This provision shall not apply to proceedings for the removal and re- interment of bodies and remains, which matters are under the supervision of the local health department.

Section 9: **WINTER BURIALS**

- A. If a winter burial cannot occur due to inclement weather, frozen ground or similar condition, the deceased person may be kept in winter storage until a spring burial can occur. Written permission by the next of kin or authorized agent must be obtained prior to winter storage. All such winter storage costs shall be paid by the estate of the deceased person or the person's next of kin.

Section 10: **CREMAINS**

- A. Cremains may be buried in **a non-deteriorating** container approved by the Township in a cemetery plot.
- B. No cremains shall be scattered or dispersed within a Township cemetery.
- C. Cremains up to four separate burials in one cemetery lot in **a designated area**.
- D. Cremains must be buried with the supervision of cemetery sexton.

Section 11: **GROUND MAINTENANCE**

- A. No grading, leveling, or excavating upon a burial space shall be allowed without the permission of the township clerk.
- B. No flowers, shrubs, trees or vegetation of any type shall be planted without the approval of the township clerk. Any of the foregoing items planted without such approval may be removed by the Township.
- C. The Township Board reserves the right to remove or trim any tree, plant, or shrub located within the cemetery in the interest of maintaining proper appearance and the use of the cemetery.
- D. Mounds, bricks, blocks, timbers and any borders that hinder the free use of a lawn mower or other gardening apparatus are prohibited.
- E. The Township shall have the right and authority to remove and dispose of any and all growth, emblems, displays or containers therefore that through decay, deterioration, damage or otherwise become 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, among others, dried flowers, wreaths, papers and flower containers must be removed or deposited in containers located within the cemetery.
- H. 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 **(unless approved by township as a cemetery marker)**, landscaping, bricks, stones, grave border materials or other structures) shall be installed or maintained within a Township cemetery, nor shall grading, digging, mounding or similar alteration of the ground or earth occur except as authorized by this Ordinance or by the Township.

**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 cemetery plot, burial site or anywhere in a Township cemetery. The purchaser or transferee of any cemetery plot 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 cemetery plot 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 Township Sexton and any Township employee, officer, official or agent.

**Section 13: FORFEITURE OF VACANT CEMETERY LOTS OR BURIAL SPACES**

Cemetery lots or burial spaces which remain vacant for forty (40) years shall revert to the township upon 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 of the expiration of the forty (40) year period and that all rights with respect to said lots or spaces will be forfeited if he does not affirmatively indicate in writing to the township clerk within sixty (60) days from the date of mailing of the within notice his desire to retain said burial rights.
- B. No written response to said notice indicating a desire to retain the cemetery lots or burial spaces in question is received by the township clerk from the last owner of record of said lots or spaces or his heirs or legal representative within sixty (60) days from the mailing of said notice.

**Section 14: REPURCHASE OF LOTS OR BURIAL SPACES**

The township will repurchase any cemetery lot or burial space from the owner for the current resident price paid the township upon written request of said owner or his legal heirs or representative.

**Section 15: RECORDS**

The Township Clerk shall maintain records concerning all burials, cemetery plots, issuance of burial permits 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: VAULT**

- A. All burials shall be within a standard concrete vault (which meets all applicable laws) installed or constructed in each cemetery plot before interment. Vaults of other suitable materials may be allowed at the discretion of the Township.

**Section 17: CEMETERY HOURS**

- A. The cemetery shall be open to the general public from the hours of sunrise to sunset each day.
- B. No person shall be permitted in the township cemeteries at any time other than the foregoing hours, except upon permission of the township board or the sexton of the cemetery.

**Section 18: OPERATION OF VEHICLES AND PARKING**

No person shall drive or move any vehicles within the cemetery except over a roadway open for vehicular traffic, or obstruct any path or driveway within the cemetery open to vehicular traffic unless so directed by the sexton. No person shall use the cemetery grounds or any driveway therein as a public thoroughfare or drive any vehicle through said grounds except for purposes of making deliveries in the cemetery, attending a graveside service or burial service, or visiting any gravesite.

**Section 19: PROPERTY DAMAGE**

No person shall remove, molest, injure, mar, deface, throw down or destroy any headstone, monument, survey marker, corner marker, tomb, vault or mausoleum, or decoration on any cemetery lot in said cemetery, or open, disturb or molest any grave or place of burial therein.

This shall not prohibit acts by the sexton or cemetery employees or public officials, in carrying out their duties.

**Section 20: AUTHORITY OF THE TOWNSHIP SEXTON**

- A. The Township Board shall appoint a Township Sexton, who shall serve at the discretion of the Township Board. The Township Sexton may be a Township

employee or independent contractor for the Township at the discretion of the Township Board.

- B. The Township Sexton shall assist other Township officials with the enforcement and administration of this Ordinance.
- C. The Township Sexton shall have such duties and obligations with regard to Township cemeteries as may be specified from time to time by the Township Board.

**Section 21: 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 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 cemetery plot, transfer fees for cemetery plots, and other matters.

**Section 22: 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 23: INTERPRETATION/APPEALS TO THE TOWNSHIP BOARD**

- A. The Township Board shall have the authority to render binding interpretations regarding any of the clauses, provisions or regulations contained in this Ordinance and any rule or regulation adopted pursuant to this Ordinance, as well as their applicability. The Township Board (or its designee) is also authorized to waive application of the strict letter of any provision of this Ordinance or any rules or regulations promulgated under this Ordinance where practical difficulties in carrying out the strict letter of this Ordinance or any rules or regulations related thereto would result in hardship to a particular person or persons or the public. Any such waiver, however, must be of such a character as it will not impair the purposes and intent of the Ordinance.
- B. Any party aggrieved by any interpretation or decision made by the Township 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 cemetery plot, 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 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 24: 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 the Ordinance, any Township rule or regulation regarding Township cemeteries, or any county, state or federal law, statute or regulation may be removed by the Township 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 Township 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 25: Penalties**

A violation of the Ordinance (or of any rule or regulation adopted pursuant to this Ordinance) constitutes a municipal civil infraction. Any person who violates, disobeys, omits, neglects or refuses to comply with any provision of this Ordinance, or any permit or approval issued hereunder, or any amendment thereof, or any person who knowingly or intentionally aids or abets another person in violation of this Ordinance, shall be in violation of this Ordinance and shall be responsible for a civil infraction. The civil fine for a municipal civil infraction shall be not less than one hundred dollars (\$100) for the first offense and not less than two hundred dollars (\$200) for subsequent offenses, in the discretion of the court, in addition to all other costs, damages, expenses and remedies provided by law. For purposes of this section, "subsequent offense" means a violation of the provisions of this Ordinance committed by the same person within twelve (12) months of a previous violation of the same provision of this Ordinance or similar provision of this Ordinance for which said person admitted responsibility or was adjudged to be responsible. Each day during which any violation continues shall be deemed a separate offense.

A violation of any permit or permit condition issued pursuant to this Ordinance shall also constitute a violation of this Ordinance.



**Section 26: Township Officials Who Can Enforce this Ordinance**

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

- Township Supervisor
- Township Clerk
- Township Sexton
- Any deputy of the county sheriff's department
- Any State Police officer

**Section 27: 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 28: Effective Date; Conflicts**

This Ordinance shall become effective thirty (30) days after a copy of this Ordinance (or summary thereof) appears in the newspaper. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

The above Ordinance was offered for adoption by Township Board Member Berney and was seconded by Township Board Member Sanderson, the vote being as follows:

YEAS: Buchanan; Booth; Avery; Berney; Sanderson

NAYS: 0

ABSENT/ABSTAIN: 0

ORDINANCE DECLARED ADOPTED.

**CERTIFICATION**

I hereby declare that the above is a true copy of an ordinance adopted by the Big Creek Township Board at a Regular meeting held on February 21, 2012, at the Big Creek Township Hall, pursuant to the required statutory procedures.

Dated: February 21, 2012

Respectfully submitted,

By Judy Berney, Big Creek Township Clerk

