

**ORDINANCE NO. 2681**

**ORDINANCE TO CREATE CHAPTER 67  
OF THE MUNICIPAL CODE OF THE CITY OF NEW BERLIN  
REGARDING MUNICIPAL CEMETERIES**

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The Common Council of the City of New Berlin do ordain as follows:

**SECTION I**

Sections 67-1, of the Municipal Code of the City of New Berlin, are hereby created to read as follows:

**Section 67-1. Ownership and Operations**

- A. State Statutes Adopted. Wis. Stats. § 157.50, describing and defining regulations with respect to the platting and operation of municipal cemeteries, is hereby adopted by reference and made a part of this Chapter as if fully set forth herein. Any act required to be performed or prohibited by any statute incorporated herein by reference is required or prohibited by this chapter.
- B. Common Council to be Cemetery Board. Pursuant to Wis. Stats. § 157.50, the Common Council is vested with control of all properties owned by the City for cemetery purposes and shall provide in perpetuity for the management, care, and operation of said cemeteries.
- C. Care Funds. All care funds held by or transferred to the City shall be deposited into the City’s cemetery fund. An accounting of funds utilized for the management, care, and operation of cemeteries controlled by the City shall be provided and reviewed as part of the City’s annual budgeting process.
- D. Management and Operation. Rules for the management and operation of said cemetery, shall be adopted and amended from time to time by resolution of the Common Council. Use of the cemetery shall be in compliance with the approved rules.
- E. Fee Schedule. Any fees related to the management and operation of City cemeteries shall be established from time to time by Staff with the approval of the Mayor. The fees for the sale of graves shall include a 15% endowment care fee.

**SECTION II**

Sections 67-2, of the Municipal Code of the City of New Berlin, shall be created to read as follows:

**67-2. Ownership of Grave Space.**

- A. The City shall maintain cemetery records regarding individuals to whom graves have been sold in the past, as well as specific records of burial.
- B. Any conveyance of cemetery lots shall conform to Section 157.08 of the Wisconsin Statutes, as it may be amended from time to time.
- C. The owner of the cemetery lot shall be the person identified in the Cemetery Deed or other conveyance, their heirs, successors or assigns. Owners of cemetery lots shall advise the City of any change in ownership as a result of conveyance or transfer through a probate proceeding. No conveyance shall be effective for a lot in which remains are buried without the consent of the City.
- D. The owner of the grave shall have the right to bury human remains in the cemetery lot in accordance with applicable Wisconsin Statutes and the terms of this City Ordinance and applicable City Cemetery Rules.

- E. Pursuant to Wisconsin Statute Section 157.10(4), as may be amended from time to time, any person who receives a cemetery plot by way of the statutory line of descent must obtain the consent of the City before conveying the grave plot to any other person.
- F. In case of death of the lot owner, when the cemetery lot is disposed of through a probate proceeding, a certified copy of the final court document assigning the lot shall be filed with the City of New Berlin. If there is an un-probated will, a certified copy of the will and such other documents as the City may deem necessary shall be delivered to the City of New Berlin before the City of New Berlin will recognize change of ownership. If the deceased lot owner left no will and there is no probate, satisfactory and sufficient proof of descent must be provided. It is recommended that the lot owner, in making their will, include a provision addressing the cemetery lot(s) and devise to one person. The City of New Berlin will not accept a transfer of interment space after interment of the original purchaser(s) unless all lineal descendants have agreed to the transaction. In the case of joint ownership, the interment rights shall pass to the surviving spouse. Lineal descendants shall have equal rights of interments. In case that there are no lineal descendants then the nearest relative of the purchaser(s) shall have the right of interment.
- G. The owner may grant permission in a form acceptable to the City, which must be notarized and placed on file with the City of New Berlin, for burial of other persons not related by lineage. No corpse shall be interred in a grave space except the corpse of one having an interest therein, or a relative, or spouse of such person, except by the consent of all persons having an interest in ownership of interment rights to such lot or grave space.
- H. All ownership of interments for lots and grave spaces is exempt from taxation and cannot be seized for debt, except those owned by the City of New Berlin, nor can they be mortgaged. All repossessed vacant grave spaces shall be subject to the same fees and charges.
- I. Persons of all denominations, of all religions are allowed burial in any City-owned cemetery.

### **SECTION III**

Sections 67-3, of the Municipal Code of the City of New Berlin, is hereby created to read as follows:

#### **67-3. Interment.**

- A. All interments shall be made in accordance with the laws of the State of Wisconsin.
- B. At least three full working days' notice is necessary whenever interments are to be made. Notice is to be made to the City of New Berlin or designee. The family of the deceased or those persons representing the deceased shall be directly responsible for making arrangements for and paying any and all applicable fees for the preparation, opening and closing of the grave and the purchase and placement of a burial vault, as well as for replacing sod, and seeding of the grave space. The contractor(s) performing such services must be approved by the City and payments to said contractor(s) must be made prior to performance of the service. The City of New Berlin assumes no responsibility for the services provided by said contractor(s) or for the protection of or the prevention of damage, or vandalism to flowers, wreaths, or any other item used in such funeral or interment proceedings.
- C. No burial will be permitted unless and until a legal report of final disposition burial transit permit has been presented to the City or its designee. The interment of bodies of persons who have died of contagious disease shall be made in strict accordance with the rules of the Wisconsin State Board of Health. Further, the following guidelines shall apply:
  - i. Only human remains may be interred in any City-owned cemetery.
  - ii. Orders for burial given by the undertaker having charge of the burial of any person will be construed by the City of New Berlin as orders from the lot owners themselves and, after interment; no changes in the location of graves will be made except at the expense of the lot owners.

- iii. The interment of two bodies in one grave will not be allowed except in the case of a parent and infant (stillborn and up to the age of two), two small children buried in one casket, a full-size burial with one cremation above, or two cremation burials.
  - iv. All interments shall be made in a permanently sealed outer burial container or sealed vault that is not constructed of wooden material.
  - v. All graves shall be excavated by a designated contractor of the City of New Berlin.
  - vi. Spreading or burying ashes on the surface of any grave will not be permitted.
- D. The City of New Berlin or its designated contractor will be responsible for restoring the lawn on new graves and for filling sunken graves and re-establishing the lawn. The lawn will be restored with topsoil, seed, and mulch.

#### **SECTION IV**

Sections 67-4, of the Municipal Code of the City of New Berlin, is hereby created to read as follows:

##### 67-4. Disinterment.

- A. No disinterment and removal of a human body or cremains shall be made without the written consent of the owner or owners of the lot or grave space and that of any surviving spouse, children, or parents of the deceased or pursuant to the order of a court with jurisdiction.
- B. A disinterment permit shall be obtained from the county coroner by the person requesting the disinterment of a human body or cremains, and all requirements of applicable Wisconsin law shall be followed.
- C. All costs associated with the disinterment are the responsibility of the person requesting the disinterment.

#### **SECTION V**

Sections 67-5, of the Municipal Code of the City of New Berlin, is hereby created to read as follows:

##### 67-5. Monuments and Markers.

- A. Only one upright type monument will be allowed on one grave space or portion thereof, with a maximum stone size of 36-inch length by 16-inch width.
- B. Only one upright type monument will be allowed on two adjoining lots deeded to the same owner(s), with a maximum stone size of 54-inch length by 16-inch width.
- C. All monuments must be placed at the end of the grave space adjacent to the designated walkway aisle, in the center, unless specific permission is given by the Common Council or designated official for placing it otherwise.
- D. Veterans graves are provided the right to place their bronze veteran's plaque provided by the government by either bolting it the back of their existing monument, or by requesting an additional foundation to be poured for the setting of the plaque on the grave. This additional foundation shall be at the expense of the lot owner(s).
- E. All upright monuments will be set on a concrete slab type foundation that must be flush at ground level with a border measurement of not less than three inches. The concrete foundation shall be no less than four inches in thickness.
- F. No monument or marker may be erected until the foundation therefore has been approved by the City of New Berlin. Each metal grave marker placed as a temporary marker by the funeral home or other person shall be removed as soon as a monument or permanent marker is installed or one year after the date of the burial, whichever comes first.
- G. The installation of any foundation for any monument will be scheduled and completed by an authorized contractor at the expense of the owner of the grave.

## SECTION VI

Sections 67-6, of the Municipal Code of the City of New Berlin, is hereby created to read as follows:

### 67-6. Privileges and Restrictions for the Lot Owner.

- A. Perpetual care of the cemetery which includes lawn care, tree care, spring and fall clean up, snow removal, and capital improvements will be assumed by the City of New Berlin employees or a City authorized contractor. Monument and marker maintenance shall be the responsibility of the Lot Owner.
- B. City employees or a City authorized contractor reserve the right to enter any lot for the purpose of trimming or removing any tree or shrub, if necessary. Trees will be removed when they are deemed dead, diseased, or detrimental to any adjacent lot, monument, marker, walkway, or driveway because of roots, branches, etc.
- C. No persons, except City of New Berlin employees or City authorized contractors, will be allowed to disturb any grave marker or sod on any lot or grave.
- D. No trees or shrubs shall be planted without the written permission of the City (or designee).
- E. All lot or grave owners wishing to make improvements to their lots must get written permission from the City of New Berlin before improvements are made.
- F. A lot owners may not plant annuals, perennials, or bulbs without the written permission of the City.
- G. A lot owner may place authorized decorations upon graves within the owner's lot or upon the owner's grave site, but any such decoration is done at the risk of the owner and the City assumes no responsibility therefor.
- H. All grave coverings of any sort placed upon any lot or grave site by the owner shall be removed by the owner no later than April 1.
- I. Artificial flowers are permitted if displayed in a permanent monument mounted vase. Should the flowers begin to degrade or become a nuisance; the City reserves the right to remove them. Natural flowers are not permitted.
- J. At no time will jars of any material, tin cans, boxes, freestanding vases, unsightly plastic containers, food and/or beverages, shells, signage or similar items, wire stands, furniture, or clothing be allowed in the cemetery. Other personal effects are also prohibited, as are knick-knacks, solar lights and lanterns, wind chimes, etc. that are not incorporated into a monument.
- K. At no time will fences, barriers, retaining walls, or any other obstructions be allowed in the cemetery.
- L. Easel decorations are allowed for the following observed holidays: Memorial Day, July 4, Labor Day, and Veteran's Day. Decorations will be allowed to be up seven calendar days before the holiday and seven days after the holiday.
- M. Decorations for personally observed days including birthdays, Mother's Day, Father's Day, anniversaries, religious holidays, and such shall be allowed. These decorations are allowed to be up seven calendar days before the observance and seven days after the holiday.
- N. The cemetery does not permit the use of biodegradable burial containers or green burials without sealed vaults.

## SECTION VII

Sections 67-7, of the Municipal Code of the City of New Berlin, is hereby created to read as follows:

### 67-7. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Block* means a designated area within a range, containing sections of a specific number of lots or grave sites.

*Cemetery* means as herein used shall refer to all cemetery property, grounds, equipment, and structures both privately and publicly owned within the City of New Berlin.

*Cemetery deed* means the official document produced by the City of New Berlin for the conveyance of ownership of interment rights to a designated grave space(s) located within a City-owned cemetery.

*Contractor* means any person, firm, or corporation other than a City employee that is engaged in placing, erecting, or repairing any memorial or monument, excavating and preparing grave sites for interments or performing any other work on the cemetery grounds.

*Corpse* means the deceased body of a human being.

*Cremains* means the incinerated remains of a corpse.

*Disinterment* means the removal of remains of a human corpse from their original place of interment.

*Disposition permit* means as used in these rules, regulations, and policies shall mean a legal "report of final disposition of a human corpse burial transit permit" issued by the State of Wisconsin.

*Foundation* means a concrete base placed flush with the ground of a grave site, on which to erect monuments, headstones, markers, or memorials.

*Grave space* means a single interment area within a plotted cemetery section. With rights of interment as described otherwise herein.

*Interment* means ground burial or other permanent disposition of the remains of a deceased person.

*Lot* means a designated area within a range, containing a specific identifying number.

*Marker/monument* means any headstone, memorial marker, or structure placed upon any lot or grave space, for the purpose of identification or memory of the interred.

*Owner* means the owner of the rights of interment to a specific lot or grave space of which the owner has an official cemetery deed on file at the City of New Berlin.

*Perpetual care* means the obligation of the City of New Berlin to maintain and care for City-owned cemetery sites for perpetuity.

*Remains* means those parts that remain of a corpse after the ravages of time, weather, or destruction.

*Sealed vault* means an outer burial container or permanently sealed container that surrounds a casket, which should be constructed of a non-wood durable substance such as concrete.

*Section* means a designated area within a range, specifically a block, containing a specific number of lots or grave sites.

*Urn* means a closed vessel used for the preservation of cremains.

### **SECTION VIII**

Sections 67-8, of the Municipal Code of the City of New Berlin, is hereby created to read as follows:

Visitors are reminded that the cemetery grounds are considered sacred and strict observance of accepted decorum shall always be required. Cemetery management may order the removal of individuals who are acting inappropriately or otherwise conducting themselves in a manner that may be deemed to be offensive. It shall be unlawful for any person to interfere with the proper conduct of a funeral with the burying or exhuming of a body in the cemetery without legal cause.

Visitors will use the walks and roads provided. Walking off the roadways or walkways is permitted, but those doing so shall assume the risk since, due to the nature of a cemetery, the ground may be uneven and depressions may develop and obstacles may be present.

It should be unlawful for any person to desecrate or damage the cemetery or any plot, grave or gravestone. No excavation is permitted within a cemetery except as authorized by the City.

The placing or disposing of any debris in the cemetery is prohibited. Any violations of this ordinance shall be subject to forfeiture and penalty, in accordance with Section 1-18 of the City Code of the City of New Berlin.

### **SECTION IX**

All Ordinances or parts of Ordinances contravening the terms and conditions of this Ordinance are hereby to that extent repealed.

### **SECTION X**

The several sections of this Ordinance shall be considered severable. If any section shall be considered by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the other portions of the Ordinance.

### **SECTION XI**

This Ordinance shall take effect upon passage and publication as approved by law, and the City Clerk shall so amend the Code of Ordinances of the City of New Berlin and shall indicate the date and number of this amending ordinance therein.

**PASSED AND ADOPTED** by the Common Council this 26th day of September, 2023.

APPROVED:

Countersigned:

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David Ament, Mayor

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Rubina Medina, City Clerk