

TOWN OF GORHAM

CEMETERY ORDINANCE

Adopted by Town Council
June 6, 2017

Amended October 1, 2019

Town of Gorham

Cemetery Ordinance.

Section 1: Purpose.

1.1 Purpose: Many cemeteries in the Town of Gorham were previously managed by independent Cemetery Associations and were later turned over to the Town to manage. The records of the cemetery Associations that were provided to the Town were sometimes incomplete or incorrect. The purpose of this ordinance is to standardize rules and regulations among the various cemeteries and maintain and administer these cemeteries for the benefit of the Town and its citizens, to preserve and protect the Cemeteries as peaceful and beautiful areas that serve as reverent symbols of the citizens' respect for the deceased. In formulating this Ordinance, a balance of interests of the various stakeholders purchasers of rights of interment; family, friends, and acquaintances of the deceased buried therein; Gorham citizens and taxpayers; maintenance workers; and commercial service providers is taken into consideration. Most important these rules and regulations are intended to ensure the safety of all who enter these cemeteries. All persons visiting the cemeteries shall abide by this Ordinance.

Section 2: Applicability; Rescission of inconsistent Ordinances or rules.

2.1 Applicability: This ordinance shall apply to the following Cemeteries and to any other cemetery, now or in the future, maintained by the Town of Gorham:

1. Eastern Cemetery
2. Fort Hill Cemetery
3. Hillside Cemetery
4. Huston Road Cemetery
5. Little Falls Cemetery
6. North Street Cemetery
7. Sapling Hill Cemetery
8. Shaws Mills Cemetery
9. Smith Cemetery
10. South Gorham Cemetery
11. South Street Cemetery
12. West Gorham Cemetery (sometimes called Dow Road or Lewis Cemetery).

2.2 Rescission: Any previously adopted Ordinance or rules, dealing with cemeteries in Gorham are hereby repealed.

Section 3: General Rules.

3.1 General: The Town reserves the right to enlarge, reduce, re-plot, or change the boundaries or grading of the cemeteries, or a section or sections thereof, from time to time, including the right to modify or change the location of, or remove or re-grade roads, drives, or walks, or any part thereof. The Town also reserves the right to lay, maintain and operate, or alter or change, pipe lines or gutters for sprinkler systems and drainage purposes and to use cemetery property, but not inconsistent with Rights of Interment already sold to Grantees, for cemetery purposes, including interment and inurnment of the dead, or for anything necessary, incidental, or convenient thereto. The Town reserves to it and to those lawfully entitled thereto, a perpetual right of ingress and egress over burial sites for the purpose of passing to and from other burial sites.

3.2 Supervisor: The Public Works Director shall have the general responsibility to supervise all cemeteries in Gorham. Wherever the term Superintendent is used it means the Public Works Director for the Town of Gorham or his/her designee.

3.3 Hours: The cemeteries shall be open to the public seven days per week from 8 am to sunset each day.

3.4 Motor Vehicles: Motor vehicles must stop when meeting a funeral cortege and only resume movement after the procession passes. Maximum speed is ten (10) miles per hour. No vehicle may be driven or parked across or upon any burial site or lawn. Parking or leaving any vehicle on any road or drive in such a way as to prevent any other vehicle from passing is prohibited. Commercial vehicles that are not directly involved in the business of the Cemeteries are not permitted. Snowmobiles and unregistered motor vehicles such as motor scooters and all-terrain vehicles are prohibited within the Cemeteries except for attendance at funerals.

3.5 Pedestrian Use: Persons within the cemeteries shall only use the avenues, walks and alleys and shall not walk upon or across lots or lawns unless it is necessary to gain access to a particular lot.

3.6 Violations: Any violation of these Rules and Regulations will be treated as a trespass or nuisance, depending on the violation, and will be referred to the Town Manager or Police Chief accordingly. Violation of the Rules and Regulations may also lead to prosecution for violation of federal or state laws. Improper conduct or violation of Rules and Regulations by anyone may result in a request to leave the Cemeteries.

3.7 Waste Removal: Individuals who enter the Cemeteries must carry out all waste that they create while in the Cemeteries. Depositing of waste, rubbish, and debris on the grounds of the Cemeteries, or neighboring and adjacent property, is prohibited.

3.8 Group Functions: The only group functions that are allowed within the Cemeteries are funerals, burials, memorial services, and educational tours. Other types of functions are not permitted unless permission is sought and granted, in advance, by the Town Manager or the Town Council.

3.9 Correction of Errors: The Town shall have the right to correct any errors that may be made by it or its agents in making interments, disinterments or removals, or in the description, transfer or conveyance of any Rights of Interment or interment property. Such corrections may include cancelling such conveyance and substituting and conveying in lieu thereof other Rights of Interment or other interment property of equal value and similar location as far as possible, or as may be selected by the Town, or, in the sole discretion of the Town, by refunding the amount of money paid to the Town on account of said conveyance. In the event such error shall involve the interment of the remains of any person in such property, the Town reserves the right to remove or transfer such remains so interred to such other property of equal value and similar location as may be substituted and conveyed in lieu thereof.

3.10 Town Authority: The Superintendent shall have charge of the grounds and property within the Cemeteries and all persons visiting the Cemeteries and the application and enforcement of these Rules and Regulations including, but not limited to, monuments, cremation and urns. The Town reserves the right to make final decisions regarding the application and enforcement of these rules and regulations.

3.11 Reasonable Precautions: Reasonable precautions will be taken to protect Grantees from loss or damage, but the Town shall not be responsible for loss or damage from causes beyond their reasonable control, and especially from damage caused by the elements, or act of God, common enemy, thieves, vandals, malicious mischief-makers, explosions, unavoidable accidents, invasions, insurrections, riots, or order of any military or civil authority, whether the same be direct or collateral.

Section 4: RIGHT OF INTERMENT.

4.1 General: The Town will issue a Right of Interment ("Right") (right to bury human remains or to bury the ashes of a human being ("cremated remains" or "cremains"), the latter hereinafter referred to as an Inurnment) upon the payment in full of the current price for such rights. Purchase of a Right in no way grants any other rights or privileges to the purchaser, and a right of interment is subject to these Rules and Regulations. No Right shall be used for any purpose other than the burial or the memorializing of the human dead, or the cremains of the human dead. The statement of any employee or agent of the Town, unless confirmed in writing by an authorized representative of the Town shall in no way bind the Town.

4.2 Purchase of Interment: Individuals considering the purchase of a Right of Interment should contact the Towns Clerk at the Gorham Municipal Center. The Town Clerk will notify the appropriate official who will assist the individual in making a decision to purchase.

4.3 Payment in Full Required: Complete payment of the purchase price for the Right of interment must be made to the Town before any burial is permitted. No partial payments will be accepted. Upon full payment for the Right of Interment, and signing of Grantee Acknowledgement Form, the Town of Gorham will issue an executed document signifying the granting of the Right.

4.4 Right of Interment only: The Grantee is the individual who has purchased the Right of Interment, or has inherited the Right from a deceased predecessor Grantee. The Grantee "owns" the Right of Interment, but does not own real property, just the right to use one or more specific burial sites in the cemeteries subject to all of the Rules and Regulations as well as applicable laws and ordinances.

4.5 Inheritance: The laws of the state of Maine determine the descent of title to Rights of interment. Heirs must prove their legal inheritance before rights to burial spaces can be reassigned. Upon the death of a Grantee, the heirs or devisees of such person must file with the Town Clerk proof of ownership for the purpose of correcting the record. Notarized statements as to relationship (e.g. Affidavit of Heirs) and certified copies of wills or court decrees (if any) are normally sufficient. The Town shall charge an administrative fee for each descent of title of each burial right.

4.6 Repurchase of Rights: The Town has no obligation to repurchase Right of interment from Grantees.

4.7 Exchange Rights: The Town may, but is not obligated to, allow exchanges of Right of interment for different burial sites within its Cemeteries. The Town shall charge an administrative fee for each exchange of each burial right.

Section 5: CARE OF BURIAL SITES.

5.1 Burial Site and Grave Site: Burial Site is the basic unit of space within the Cemeteries used or intended to be used for the burial of human remains. It is also commonly referred to as a single "grave site".

5.2 Site Boundary: No burial site shall be defined by a fence, railing, hedge, crypt, or enclosure of any description. Boundaries that existed prior to the adoption of this Ordinance around burial sites may be maintained as a boundary by the owners of the internment right, but no one is allowed to add to or replace them.

5.3 Right to Remove: The Town, or their agent/designee have the right to remove all floral designs, vases, urns, decorations, flowers, shrubs, wreaths, plants, and other materials placed in Cemeteries that, in their opinion, become unsightly, dangerous, detrimental, diseased, or that interfere with normal maintenance of Cemeteries.

5.4 Perpetual Care: The general care of the surface conditions of the Cemeteries is the responsibility of the Town and includes cutting of grass, filling in sunken graves, trimming bushes and trees, and raking and cleaning the grounds. Perpetual care does not include, nor does

the Town assume any responsibility, for caring for or planting flowers or ornamental plants, or other special work.

Section 6: INTERMENTS AND INURNMENTS.

6.1 Timing: Cemeteries shall be open for interments and inurnments Monday through Saturday from 8 am to 4 pm. There shall be no interments and inurnments permitted after December 1 through April 1; however, this prohibition may be waived at the discretion of the Town if weather conditions or soil conditions warrant such a waiver. Interments and inurnments will not be permitted on Sundays or federal or state holidays unless waived by the Town. Any service extending beyond the established hours will be subject to an additional fee.

6.2 Notice: Forty-eight (48) hours-notice (not counting Sundays or holidays) must be given to the Town by the funeral or burial service provider prior to all interments.

6.3 Delay: The Town reserves the right to postpone any interment and inurnment due to weather conditions or other emergency. The Town shall not be responsible or held liable for any costs or damages for any delay in an interment/inurnment due to a written, timely protest to the interment or inurnment by a third party, or where the Rules and Regulations or any law or ordinance has not been met. The Town is under no obligation to recognize any protest of an interment or inurnment unless it is in writing and delivered to the Town Clerk.

6.4 Location: When an interment and inurnment is to be made, the location of such shall be designated by the Grantee of the Right or their representative or agent. Should the Grantee or their representative fails or neglects to make such designation, particularly when the Grantee owns rights in multiple burial sites, the Town reserves the right to make or direct the interment and inurnment in a location designated by the Town. An individual who presents himself or herself as having the authority of the Grantee for this purpose of locating an interment or inurnment shall certify in writing that they have such authority (e.g., Affidavit of Authority) and accept full responsibility and liability for their actions, and will hold the Town Clerk, Superintendent, and Town harmless from any liability, including legal costs, on the account of such authority and disposition.

6.5 Instructions: Prior to the interment or inurnment, Grantees or their heirs or representatives are encouraged to provide the Superintendent a written communication as to the location of the burial. The Town cannot be responsible for a mistake as to the particular space or location in the plot resulting from lack of precise and proper written instructions (for example, mistake caused by any order given by telephone).

6.6 Vaults and concrete boxes: In order to maintain a high standard of care and to eliminate sunken graves, all burials must be made using rigid and durable outside containers (commonly known as "vaults and concrete boxes) made of natural stone, reinforced concrete, or any similar container approved by the Town. Cremated remains must be interred in a permanent container approved by the Town.

6.7 Limits: No interment of two (2) or more bodies shall be made in one (1) burial site except in the case of a mother or father and a child, or two (2) infants buried in one (1) casket (or two (2) caskets if small enough to fit within the burial space), or six (6) cremated remains, or one (1) full burial and two (2) cremations. All interments of multiple bodies' remains shall be located and made by the Town. No double depth standard interments will be made.

6.8 Prohibition: Interments and inurnments are to be performed only by the Town or individuals or entities approved by the Town. Grantees and other parties not approved by the Town are specifically prohibited from performing interments or inurnments. The Town will take all reasonable action to rectify any such prohibited burials and seek damages and costs from violators of this rule. The Town will not be responsible for recording the unauthorized burial, including the identity of the deceased.

6.9 Movement of Monuments: Monuments and Markers may have to be moved or removed to gain access to burial sites for purposes on interment or inurnment. The Town will restore the moved items to their initial position as soon as time and weather permit.

6.10 Funeral Directors: All funeral or burial parties entering Cemeteries shall be under the direction of a funeral director licensed by the state of Maine who shall abide by the Rules and Regulations.

6.11 Casket: Once a casket containing a body is within the Cemeteries, it shall not be opened except by a licensed funeral director or his or her assistants or on an order signed by a court of competent jurisdiction.

6.12 Fee: The Town will charge an administrative fee for all interments and inurnments.

Section 7: PLANTS.

7.1 Shrubs: Prior to planting any shrub, approval of the Town must be obtained. Shrubs growing on any burial site may be pruned or removed by the Town or its agents at the discretion of the Town. Generally, no shrubs or trees will be permitted on a single burial site, or at individual Monuments or Markers. Plantings on two (2) abutting burial sites, or larger plots, may be permitted, subject to pre-approval of the Town.

7.2 Removal of plants to gain access: Planted materials may have to be removed to gain access to burial sites. The Town is not responsible for damage or losses resulting from removal of plant material during any interment or inurnment process.

7.3 Landscape: The Town may undertake, to the extent practicable, the pruning of trees and shrubs to preserve the general landscape features of the Cemeteries, but will not undertake to maintain individual plantings, or containers of plants.

7.4 Flowers: Any planting of flowering plants is restricted to non-spreading varieties. Any perennial plantings must be pre-approved by the Town.

Section 8: MONUMENTS AND MARKERS.

8.1 Definitions: Monument shall mean any above grade level burial site identification object made of stone, bronze, or other material. Marker (also commonly called "headstones" or "flush markers or memorials") shall mean any grade level burial site identification object made of stone, bronze or other material.

8.2 Location and Construction: The location of all Monuments and Markers shall be determined and marked out by the Town. The Grantee has no authority, either specific or implied, to locate or mark out the Monument or Marker by himself or herself or to cause his or her agent to do so. The Grantee is responsible for any and all costs incurred for remedying any error in their locating a Monument or Marker independently of the Town. All Monuments must have a foundation as specified by the Town. The Town does not assume any responsibility for the proper construction of foundations or setting of Monuments or Markers.

8.3 Single Burial Site: A single burial site shall have no more than one (1) Monument and no more than two (2) Markers. The foundation base on a single burial site generally shall be no wider than thirty-two (32) inches. At the discretion of the Town, a Monument or Marker may have a base size of up to seventy-five percent (75%) of the width of the burial space.

8.4 Multiple Burial Sites: Multiple burial sites that abut each other may have a larger Monument than a single burial site, if approved in advance. The Town has authority to approve applications for such Monuments.

8.5 Repair: Monuments and Markers that are placed in the cemeteries remain the property of the Grantee or party purchasing them. Monuments and Markers erected by Grantees shall be maintained in a safe condition by the Grantee (including heirs and assigns), Notwithstanding the primary maintenance responsibility of the Grantee, the Town may, at its sole discretion, take appropriate steps to resolve safety concerns.

8.6 Installation: Monuments and Markers may not be installed until all relevant fees and expenses have been paid. The Town must approve, in advance, all installations.

8.7 Temporary Markers: Temporary Markers may remain on a burial site for up to 120 days of an interment or inurnment. The Town may remove such markers at the end of this period if the Grantee fails to do so. If a Monument or Marker is on order by the end of the 120-day period, the Town will allow the Temporary Marker to remain until the Monument or Marker is installed.

Section 9: DISINTERMENTS.

9.1 Law: Disinterment's are governed by State statute, Title 22 MRSA Section 2843 as may be amended from time to time. A permit for disinterment or removal of a dead human body must be obtained from the Town Clerk of the Town of Gorham.

9.2 **Fee:** Cost of the disinterment shall be the responsibility of the party causing or seeking the disinterment. The Town may charge a fee to reasonably cover administrative, labor and equipment costs.

9.3 **Opening:** The Town will allow and observe the opening of a grave upon showing, to the Superintendent's satisfaction, of requisite identification, authorization documentation and permit. In all disinterment cases, the responsibility of the Town shall be limited to identifying the grave only and the actual disinterment must be made by the person authorized to do so.

Section 10: RULES OF CONDUCT.

10.1 **Mischief:** No person shall destroy, mutilate, deface, injure or remove any monument, marker, gravestone, fence, railing, other structure, plant, or other Town properties within the cemeteries.

10.2 **Dogs:** Dogs brought into the cemeteries must be on leash at all times. Persons walking dogs in the cemeteries must pick up any of their droppings and dispose of it outside of the cemeteries, and will be strictly liable for any personal harm or property damage caused by the dog.

10.3 **Insurance:** All commercial service providers entering the Cemeteries to perform services or deliver commercial products must have liability and workers' compensation coverage consistent with the Town's requirements and present proof of insurance to the Town.

10.4 **Prohibited:** Some articles are considered injurious to the beauty and dignity of the cemeteries and can create safety hazards and reduce the peaceful ambiance therein. The following objects are not permitted in the cemeteries:

- Non-organic material
- Breakable items
- Unsightly items
- Eternal flames or any open flames and
- Weapons except those used by honor guards or in military funerals or carried by law enforcement officers consistent with their policies and procedures

10.5 **Alcohol or Illegal Substance:** No person shall be in possession of or consume any alcoholic beverage within Cemeteries. No person shall be in possession of or consume any illegal substance within Cemeteries.

10.6 **Peaceful conduct:** No person shall behave in a loud, indecent, or disorderly manner in the Cemeteries or create any unnecessary disturbance therein. It is of the utmost importance that there should be a strict observance of the proprieties in the cemetery. The discharge of firearms or fireworks therein are strictly prohibited. This is not to be construed as prohibiting ceremonial volleys with blank charges by properly supervised honor guards as a tribute to a deceased person if such ceremonial undertaking has been previously scheduled with the Town. Horseplay, games, contests, sports activities, or any similar activity or gathering not in keeping with the purpose and dignity of a cemetery are prohibited within the Cemeteries.

10.7 Horses: Horses are prohibited from the Cemeteries except for the purpose of funeral, ceremonial, or memorial functions. Owners are responsible for cleaning up after their horses.

Section 11: AUTHORITY.

11.1 Authority: The Superintendent, and the Superintendent's designee, is hereby vested with the supervision and control of the grounds, property, and visitors of the Cemeteries pursuant to Section 3.

11.2 Decisions of Superintendent. In the event that a Grantee or their representative or agent has been aggrieved by the Superintendent's application or enforcement of these Rules and Regulations, the Grantee or their representative or agent may appeal the Superintendent's decision to the Town Manager. The grievance must be received in writing within twenty-one (21) calendar days of the cause of action for the grievance.

Section 12: VIOLATIONS.

12.1 Any violation of any section of this ordinance may be prosecuted to the full extent of the law and subject to any fines and equitable relief as may be available.

Section 13: SEVERABILITY/AMENDMENT.

13.1 In the event any section or provision of this ordinance is declared invalid by a court of competent jurisdiction, the remaining sections or provisions shall continue in full force and effect.

13.2 This ordinance may be amended by the Town Council at any properly noticed meeting.