

CEMETERIES

APPLICABLE RULES

- **CHAPTER 173, JACKSONVILLE ORDINANCE CODE**
- **CHAPTER 497, FLORIDA STATUTES**
- **§704.08, FLORIDA STATUTES**
- **CHAPTERS 817 & 872, FLORIDA STATUTES**
- **RULE 69K, FLORIDA ADMINISTRATIVE CODE**

CHAPTER 173

JACKSONVILLE ORDINANCE CODE

- **Cemetery means any one of or a combination of the following, in a place used or to be used, and dedicated or designated, for cemetery purposes for human remains:**
 - **(1) A burial park for earth interment;**
 - **(2) A mausoleum; or**
 - **(3) A columbarium.**

F.S. § 497.005(11)

- **(11) "Cemetery" means a place dedicated to and used or intended to be used for the permanent interment of human remains or cremated remains. A cemetery may contain land or earth interment; mausoleum, vault, or crypt interment; a columbarium, ossuary, scattering garden, or other structure or place used or intended to be used for the interment or disposition of cremated remains; or any combination of one or more of such structures or places.**

JOC § 173.102. Permit required.

- No person shall operate a cemetery except as provided by this chapter and without first obtaining a permit from the Director of Regulatory and Environmental Services (department name should be corrected).

Sec. 173.103. Cemetery plats.

- **(a) Plat required.** No person shall inter human remains in any cemetery in the city unless the cemetery has been approved by ordinance and a plat thereof, as approved by the Council, has been filed . . .
- **(e) Exemption.** This section, except subsection (d) of this section, does not apply to a cemetery in operation on December 1, 1970.

JOC § 173.104

Cemetery maintenance.

(a) A cemetery shall be maintained free of any unsanitary conditions and mosquito-breeding areas. All urns and basins shall be treated or cleaned so as to prevent growth of mosquito larvae. A cemetery shall be kept free of garbage, trash, refuse or similar discarded or abandoned materials and shall be kept free of weeds and any wild, uncultivated and unkept weeds, grass, underbrush or undergrowth (but not healthy live freestanding trees or any vegetation protected by state law) having a height in excess of twenty-four inches, and any flower and shrub trimmings, garbage and refuse.

JOC § 173.104

Cemetery maintenance.

(b) A cemetery for which there is no traceable ownership and which fails to meet any or all of the maintenance requirements as herein set forth shall be deemed and declared to be a public nuisance. Traceable ownership shall mean any owner, trustee or similar person with an ownership interest or other legal responsibility for such maintenance. When any such offending condition is found to exist, the Director shall cause such condition to be abated generally in accordance with the provisions of **Chapter 370** in order to ensure due process and to carry out the purposes of this chapter.

JOC § 173.105

Cemetery operations.

(a) No person shall inter any human remains in the city in any place other than an approved cemetery under the provisions of this chapter.

(b) No person shall bury or remove from the city human remains without first securing from the local Registrar of Vital Statistics a burial or transportation permit

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JOC § 173.105

Cemetery operations.

- **(c) Every individual grave shall have minimum dimensions of three feet in width, eight feet in length, and four feet in depth, except:**
 - **(1) A grave in which a permanent outer container is used.**
 - **(2) A grave in a cemetery section reserved and used exclusively for burial of infants.**
- **(d) No person shall bury or cause to be buried any human remains in a grave site which is surrounded or otherwise attended by any form of coping, cradle or fences.**
- **(e) No person shall bury or cause to be buried any human remains in a grave beneath the ground surrounded or otherwise attended by a wooden box or similar box and only such grave boxes as are made of cement, concrete or similar material shall be permitted.**
- **(f) No person shall bury or cause to be buried any human remains in any overground or aboveground vault, but specifically excluding any mausoleum or columbarium.**

JOC § 173.105

Cemetery operations.

- **(g) No person shall own or operate a cemetery without secure and properly maintained perimeter or boundary fencing so as to restrict or prevent ingress to or egress from the property, except at specified points or locations serviced by walkways or driveways or other similar thoroughfares with a paved or otherwise prepared or properly maintained surface.**

JOC § 173.107

- **Perpetual care and maintenance trust fund required; exemption for certain pauper burials.**

- **No person shall sell . . . any burial sites . . . which burial sites are not subject to the perpetual care and maintenance trust fund requirements of F.S. Chapter 497 . . . Prior to receipt of a permit from the Director, or prior to making any new sales . . . such person shall establish a trust fund with a trust company, state or national bank holding trust powers . . . and supply to the Director a copy of the trust fund agreement . . . showing the date of agreement together with the percentage of purchase price of burial sites required to be deposited.**

JOC § 173.107 (cont'd)

- **No person shall withdraw or transfer any portion of the corpus of the care and maintenance trust fund without first obtaining the express written consent of the Director. There shall be exempt from the perpetual care and maintenance trust fund requirements of this chapter any pauper burial provided by the city and any and all burial sites subject to the trust fund requirements of F.S. Chapter 497.**

JOC § 173.108

Individual contracts for perpetual care and maintenance.

- **At the time of making a sale or receiving the initial deposit hereunder, the maker or recipient shall deliver to the person to whom such sale is made, or who makes such deposit, an instrument in writing which shall specifically state:**
 - **(a) The total purchase price of the burial sites sold;**
 - **(b) The amount of funds to be deposited in the trust fund; and**
 - **(c) That the net income of the care and maintenance trust fund shall be used solely for:**

JOC § 173.108

Individual contracts for perpetual care and maintenance.

- **(1) The care and maintenance of the cemetery,**
- **(2) Reasonable costs of administering the care and maintenance, and**
- **(3) Reasonable costs of administering the trust fund.**

JOC § 173.109

Deposits in trust.

- **There shall be set aside and deposited in the perpetual care and maintenance trust fund an amount not less than ten percent of the purchase price of the burial sites sold, not later than thirty days after receipt of payment; provided that such amount shall not be less than twenty-five dollars. . .**

JOC § 173.109

Deposits in trust.

The care and maintenance trust fund shall be invested and reinvested by the trustee under the provisions of F.S. ch. 518, as the same may be from time to time amended. The fees and other expenses of the trust fund shall be paid by the trustee from the net income thereof and may not be paid from the corpus. To the extent that the net income is not sufficient to pay such fees and other expenses, they shall be paid by the cemetery company.

JOC § 173.110

Financial reports of trust fund.

- **Within sixty days after the end of the calendar or fiscal year of the cemetery operation, the trustee shall furnish to the Director of Finance adequate financial reports with respect to the trust fund in a manner satisfactory to the Director of Administration and Finance. However, the Director of Administration and Finance may require the trustee to make such additional financial reports as he may deem necessary and advisable.**

JOC § 173.112

Penalty.

- It shall be unlawful and a **class D** offense for any person to violate or to fail to comply with any provision of this chapter. Each day a violation continues shall constitute a separate offense.

JOC § 609.102

PENALTIES

	FINE COSTS		TOTAL
Class A	\$ 50	\$ 5	\$ 55
Class B	\$ 75	\$ 5	\$ 80
Class C	\$125	\$ 5	\$130
Class D	\$250	\$ 5	\$255
Class E	\$350	\$ 5	\$355

FLORIDA STATUTES CHAPTER 497

FUNERAL, CEMETERY, AND CONSUMER SERVICES

PART I - GENERAL PROVISIONS

PART II - CEMETERY REGULATION

PART III - FUNERAL DIRECTING, EMBALMING, AND RELATED SERVICES

FLORIDA STATUTES CHAPTER 497

FUNERAL, CEMETERY, AND CONSUMER SERVICES

PART IV - PRENEED SALES

PART V - MONUMENT ESTABLISHMENTS

PART VI - CREMATION, CREMATORIES, AND DIRECT DISPOSITION

F.S. § 497.158 Court enforcement actions; powers; abatement of nuisances.

- **(1) In addition to or in lieu of other actions authorized by this chapter, the department may petition the courts of this state for injunctive or other relief against any licensed or **unlicensed person** for the enforcement of this chapter and orders issued under this chapter.**

F.S. § 497.158 Cont'd.

- The court shall be authorized to impose a fine of up to \$5,000 per violation on any licensee under this chapter and up to \$10,000 on any person **not licensed** under this chapter, payable to the department, upon any person determined by the court to have violated this chapter, and may order payment to the department of the department's attorney's fees and litigation costs, by any person found to have violated this chapter.

F.S. § 497.158 Court enforcement actions; powers; abatement of nuisances.

- **(4) Any nonconforming physical condition in a cemetery or component thereof which is the result of a violation of this chapter or of the rules adopted under this chapter relating to construction, physical operations, or care and maintenance at the cemetery shall be deemed a public nuisance, and the nonconforming physical conditions caused by such violation may be abated as provided in s. 60.05.**

F.S. § 497.160

Receivership proceedings.

- **(1) The department, with the approval of the board, may petition the circuit courts of this state for appointment of a receiver of any licensee or revoked or suspended licensee under this chapter, or person who has without license conducted activities requiring licensure under this chapter. The court shall appoint a receiver if the court shall determine that a receivership is necessary or advisable:**

F.S. § 497.160

Receivership proceedings.

- **(a) To ensure the orderly and proper conduct of a licensee's professional business and affairs during or in the aftermath of the administrative proceeding to revoke or suspend the license.**
- **(b) For the protection of the public's interest and rights in the business, premises, or activities of the person sought to be placed in receivership.**

F.S. § 497.160

Receivership proceedings.

- (c) Upon a showing of actual or constructive abandonment of premises or business licensed or **which was not but should have been** licensed under this chapter.
- (d) Upon a showing of serious and repeated violations of this chapter demonstrating an inability or unwillingness of a licensee to comply with the requirements of this chapter.

F.S. § 497.160

Receivership proceedings.

- **(e) To prevent loss, wasting, dissipation, theft, or conversion of assets that should be marshaled and held available for the honoring of obligations under this chapter.**
- **(f) Upon proof of other grounds which the court deems good and sufficient for instituting receivership action concerning the respondent sought to be placed in receivership.**

F.S. § 497.260 Cemeteries; exemption; investigation and mediation.

1) The provisions of this chapter relating to cemeteries and all rules adopted pursuant thereto shall apply to all cemeteries except for:

- (a) Religious institution cemeteries of less than 5 acres which provide only single-level ground burial.**
- (b) County and municipal cemeteries.**

F.S. § 497.260 Cemeteries; exemption; investigation and mediation.

- **(c) Community and nonprofit association cemeteries which provide only single-level ground burial and do not sell burial spaces or burial merchandise.**
- **(d) Cemeteries owned and operated or dedicated by a religious institution prior to June 23, 1976.**
- **(e) Cemeteries beneficially owned and operated since July 1, 1915, by a fraternal organization or its corporate agent.**

F.S. § 497.260 Cemeteries; exemption; investigation and mediation.

- **(f) A columbarium consisting of less than one-half acre which is owned by and immediately contiguous to an existing religious institution facility and is subject to local government zoning. . .**

F.S. § 497.260 Cemeteries; exemption; investigation and mediation.

- **(g) Family cemeteries of less than 2 acres which do not sell burial spaces or burial merchandise.**
- **(h) A mausoleum consisting of 2 acres or less which is owned by and immediately contiguous to an existing religious institution facility and is subject to local government zoning. . . .**

**F.S. § 497.263 Cemetery companies;
license required; licensure requirements and
procedures.**

(1) LICENSE REQUIRED. No person may operate a cemetery without first obtaining a license under this section, unless specifically exempted from this chapter.

F.S. § 497.266 Care and maintenance trust fund; remedy of department for noncompliance.

- **(1) No cemetery company may establish a cemetery, or operate a cemetery if already established, without providing for the future care and maintenance of the cemetery, for which a care and maintenance trust fund shall be established, to be known as "the care and maintenance trust fund of ____." The trust fund shall be established with a trust company operating pursuant to chapter 660, with a state or national bank holding trust powers, or with a federal or state savings and loan association holding trust powers.**

**F.S. § 497.284 Abandoned cemeteries;
immunity; actions.**

(1) Notwithstanding any provision of law to the contrary, a county or municipality which has within its jurisdiction an abandoned cemetery or a cemetery that has not been reasonably maintained for a period in excess of 6 months may, upon notice to the department, take such action as is necessary and appropriate to provide for maintenance and security of the cemetery.

F.S. § 497.284 Abandoned cemeteries; immunity; actions. (cont'd)

The solicitation of private funds and the expenditure of public funds for the purposes enumerated in this subsection are hereby authorized, provided that no action taken by a county or municipality under this subsection shall establish an ongoing obligation or duty to provide continuous security or maintenance for any cemetery.

F.S. § 497.284 Abandoned cemeteries; immunity; actions.

- **(2) No county or municipality nor any person under the supervision or direction of the county or municipality, providing good faith assistance in securing or maintaining a cemetery under subsection (1), may be subject to civil liabilities or penalties of any type for damages to property at the cemetery.**
- **(3) A county or municipality that has maintained or secured a cemetery pursuant to the provisions of subsection (1) may maintain an action at law against the owner of the cemetery to recover an amount equal to the value of such maintenance or security.**

AGO OPINION 2006-22

- **In light of the provisions of F.S. § 497.284, “a county may expend public funds to clean up a private cemetery that has not been reasonably maintained for a period in excess of six months, provided the county provides notice to the Department of Financial Services.**

F.S. § 497.286

**Owners to provide addresses;
presumption of abandonment;
abandonment procedures; sale
of abandoned unused burial
rights.**

F.S. § 704.08 Cemeteries; right of ingress and egress for visiting or maintenance.—

- **The relatives and descendants of any person buried in a cemetery shall have an easement for ingress and egress for the purpose of visiting the cemetery at reasonable times and in a reasonable manner. The owner of the land may designate the easement. If the cemetery is abandoned or otherwise not being maintained, such relatives and descendants may request the owner to provide for reasonable maintenance of the cemetery, and, if the owner refuses or fails to maintain the cemetery, the relatives and descendants shall have the right to maintain the cemetery.**

CRIMES

F.S. Chapter 817 - FRAUDULENT PRACTICES

- **§ 817.35 Sale of cemetery lots or mausoleum space; promises.—**
 - **(1) It shall be unlawful for any person, firm or corporation, to sell, offer for sale, or advertise for sale, cemetery lots or mausoleum space, upon the guarantee, promise, representation or inducement to the purchaser that the same may be sold or repurchased at a financial profit.**
 - **(2) Any violation of this section shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.**

CRIMES

Chapter 872

OFFENSES CONCERNING DEAD BODIES AND GRAVES

**872.02 Injuring or removing tomb or
monument; disturbing contents of grave or
tomb; penalties.--**

CRIMES

Chapter 872

- **(1) A person who willfully and knowingly destroys, mutilates, defaces, injures, or removes any tomb, monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts, or other structure or thing placed or designed for a memorial of the dead, or any fence, railing, curb, or other thing intended for the protection or ornamentation of any tomb, monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts, or other structure before mentioned, or for any enclosure for the burial of the dead, or willfully destroys, mutilates, removes, cuts, breaks, or injures any tree, shrub, or plant placed or being within any such enclosure, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.**

CRIMES

Chapter 872 (Cont'd)

- (2) A person who willfully and knowingly disturbs the contents of a tomb or grave commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (3) This section shall not apply to any person acting under the direction or authority of the Division of Historical Resources of the Department of State, to cemeteries operating under chapter 497, or to any person otherwise authorized by law to remove or disturb a tomb, monument, gravestone, burial mound, or similar structure, or its contents, as described in subsection (1).
- (4) For purposes of this section, the term "tomb" includes any mausoleum, columbarium, or belowground crypt.

ADDITIONAL REGULATIONS

JOC § 123.102. Fees established.

- There are hereby established for the departments listed below the indicated fees for the indicated permits, materials or services:

- (iii) Environmental health permits--annual fees:

- (G) Cemetery:
 - (1.) One acre or less . . . 150
 - (2.) Each additional acre or portion thereof (maximum payment of \$290) . . . 10

JOC CHAPTER 111

SPECIAL REVENUE AND TRUST ACCOUNTS

PART 2. HEALTH AND HUMAN SERVICES

- **§ 111.235. Cemetery Maintenance Trust Fund.** There is hereby created the Cemetery Maintenance Trust Fund, a permanent trust fund of the City, into which shall be deposited all donations, gifts, grants, fees, transfers and funds as may be from time to time received by the City and appropriated by the Council for the purpose of providing maintenance to the Mt. Olive Cemetery, the Memorial Cemetery, the Pinehurst Cemetery and the Sunset Cemetery pursuant to F.S. § 497.345. All monies placed into this trust fund shall be expended, subject to appropriation by the Council, solely for maintenance of the specific cemeteries listed herein. The monies in this trust fund shall not lapse as of the end of any fiscal year and shall remain available for expenditure pursuant to the provisions of this Section. The monies in this trust fund shall not be reduced below **\$123,092.05.**

CHARTER PROVISION

TREE PROTECTION

ARTICLE 25. MINIMUM STANDARDS FOR TREE PROTECTION, CONSERVATION AND MITIGATION DURING DEVELOPMENT

Section 25.02. Definitions.

- The following definitions apply to words or phrases in this article.
- b. **Development Site**; exceptions for land in bona-fide agricultural use, cemeteries, existing single-family residential lots and land within a City drainage easement or City drainage right-of-way. The term "development site" as used in this article shall mean any land area which is being cleared for any horizontal or vertical improvements or construction. However, the term "development site" shall not include (a) any land area that is being used for bona fide agricultural purposes, **(b) cemeteries**, (c) any lot on which either a single-family dwelling or mobile home is located that meets the exemption criteria described in Section 25.06 of this article, or (d) any land area located within a City drainage easement or City drainage right-of-way that meets the exemption criteria described in Section 25.06 of this article.

TREE PROTECTION

JOC § 656.1205. Removal of protected trees prohibited; exceptions.

- **(b) The following protected trees are exempted from the provisions of Subpart A. Where an exemption is claimed, an applicant must obtain a permit pursuant to Section 656.1206 for a fee of \$25 and provide supporting evidence that the applicant is entitled to the exemption, as requested by the Building Inspection Division:**

JOC § 656.1205 CONT'D

- **(10) Any tree located on an individual cemetery plot and removed at the request and with the consent of an individual cemetery plot owner; provided, however, that this exemption shall not apply to the expansion of existing cemeteries. As used in this subsection, cemetery plot shall mean a lot in any cemetery designated and maintained for the interment of a human body, or bodies or remains thereof and for no other purpose. As used in this subsection, cemetery plot owner shall mean a person, or his representative, in whose name a plot is listed in a cemetery organization's office as the owner of the exclusive right of sepulture; or who holds from a cemetery organization, a certificate of ownership or other instrument of conveyance of the exclusive right of sepulture in a particular plot in the organization's cemetery.**

SUBDIVISION REGULATIONS

Chapter 654 CODE OF SUBDIVISION REGULATIONS

- **Sec. 654.122. Design standards: historic and archaeological sites.**
 - **(c) Human burials--to knowingly disturb human remains is a third degree felony in the State of Florida, pursuant to F.S. Ch. 872 (Offenses Concerning Dead Bodies and Graves). The law includes prehistoric, as well as historic period internment, aboriginal burial mounds or cemeteries, as well as historic period cemeteries. Procedures for dealing with human remains shall be carried out according to the above-referenced statute, which is coordinated by the Florida Division of Historical Resources.**

TAXATION

Chapter 770 COUNTY OCCUPATIONAL LICENSE TAX

Sec. 770.304. Cemeteries, mausoleums, etc.

- Every person engaged in the business of operating for a profit a cemetery, mausoleum or similar place or institution shall, for each place of business, pay a license tax of \$150.

Chapter 772 MUNICIPAL OCCUPATIONAL LICENSE TAX

Sec. 772.307. Cemeteries, mausoleums, etc.

- Every person engaged in the business of operating for a profit a cemetery, mausoleum or similar place or institution shall, for each place of business, pay a license tax of \$100.

Division of Funeral, Cemetery, and Consumer Services

69K-11.003 Citations for Cemeteries, Preneed Sales, and Monument Establishments.

(1) Pursuant to Section 497.155, F.S., the Board sets forth in this rule those violations for which there is no substantial threat to the public health, safety, and welfare. The Department shall have the authority to issue citations for the violations set forth herein. The licensee must confirm that the violation has been corrected or is in the process of being corrected, upon acceptance of the citation. For each violation, there is a range of fines to be imposed depending upon whether the violation is the first or second violation of the particular provision within the previous six (6) year period. (Multiple occurrences of a specific violation within an examination report will be cited as one violation.)

Division of Funeral, Cemetery, and Consumer Services

- **RULES PROMULGATED UNDER CHAPTER 69K ARE FOR REGULATION OF LICENSEES.**

THANK YOU!

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