TO: The Honorable City Council

FROM: David Whitaker, Director Legislative Policy Division Staff

DATE: July 24, 2019

RE: ESTABLISHMENT OF A CEMETERY IN DISTRICT 3

The Legislative Policy Division was asked by City Council Member Benson to write a report on the rules, regulations, and process of establishing a cemetery.¹

State Regulations

According to the Cemetery Regulation Act of 1968, a cemetery is defined as 1 or a combination of more than 1 of the following:

- A burial ground for earth interments
- A mausoleum for crypt entombments
- A crematory for the cremation for human remains
- A columbarium for the inurnment of cremated remains

A cemetery engaged in any of the activities listed above, that are not owned and operated by a municipality, church, or a religious institution will be subject to Cemetery Regulation Act of 1968.² Cemeteries owned and operated by a municipality, church, or religious institution are exempt from Act 251 of 1968.

¹ This Report attempts to summarize the statutory and regulatory scheme found under Michigan law relative to the establishment of cemeteries, however anyone that is attempting to establish a cemetery should seek advice from counsel having expertise in the area of cemetery establishment, before acting on anything recorded here.
² Department of Licensing and Regulatory Affairs' website: michigan.gov/lara/
• Proof of Health Department approval\textsuperscript{10}, if applicable
• Copy of permit\textsuperscript{11}, if applicable

The commissioner will investigate all owners, directors, partners, members, etc. to determine their experience, financial security, responsibility, and stability, as well as, the source, nature, and the amount of funding needed\textsuperscript{12}. A person or group is ineligible to be a cemetery owner or have a controlling interest, if they were convicted of a felony or a misdemeanor involving fraud, theft, or dishonesty; submitted false information on the application; or fails the commissioner’s investigation\textsuperscript{13}. It is at the discretion of the commissioner to use arrests, bankruptcy filings, delinquent taxes, or any non-compliance with regulatory requirements of any kind in any state to evaluate an applicant’s ability to establish and maintain a cemetery\textsuperscript{14}.

\textit{A Prepaid Funeral and Cemetery Sales}

The owner of the cemetery will also need to apply for a certificate of registration, which if approved is valid for 3 years from the cemetery commissioner for $120\textsuperscript{15}. This certificate allows a cemetery to accept payment in advance of someone’s death for funeral or cemetery services and/or merchandise\textsuperscript{16}.

A Prepaid Funeral and Cemetery Sales Registration Application Requires:
• Name and business address of the person registering
• The names and addresses of persons owning 10\% or more interest
• The business address where books and records pertaining to prepaid contracts will be maintained for inspection by the department
• A list of the names and addresses of any escrow agents in which funds have or will be deposited\textsuperscript{17}
• Copies of all escrow and trust fund agreements between the registrant and an escrow agent\textsuperscript{18}
• A statement made under oath that the registrant has an agreement with each escrow agent

The Licensing Division may deny an application if the person was previously registered, and the registration was revoked or suspended within 2 years before the date of the current application; or the person was or is presently an owner with a substantial interest in an entity, partner, or employee of a person whose registration was revoked or suspended within 2 years before the

\textsuperscript{10} The Department of Licensing and Regulatory Affairs, Cemetery Regulation, General Rules R 456.1201
\textsuperscript{11} Required under the \textit{Natural Resources and Environmental Protection Act}, PA 451 of 1994 MCL 324.5542.
\textsuperscript{12} Cemetery Regulation Act, MCL 456.528
\textsuperscript{13} Cemetery Regulation Act, MCL 456.533a
\textsuperscript{14} Act 251 of 1968, MCL 456.533a
\textsuperscript{15}\textit{Prepaid Funeral and Cemetery Sales Act}, PA 255 of 1986, MCL 328.216
\textsuperscript{16} MCL 328.214 defines merchandise as cemetery vaults, other outside containers, grave memorials, caskets, catafalques, etc. It does not include land, mausoleums, or columbariums.
\textsuperscript{17} \textit{Prepaid Funeral and Cemetery Sales Act}, MCL 328.216
\textsuperscript{18} MCL 328.217-.218 and MCL 328.222, describes rules and regulations a registrant and escrow agent must follow.
The group of people that wishes to incorporate must have a meeting with the municipality that the proposed cemetery will be located in\(^{28}\). If they are granted the right to incorporate, then they must elect a board of no less than 9 and no more than 12 trustees.\(^{29}\) The members of the board of trustees can vote to make by-laws, rules, and regulations for the officers to follow in order to ensure proper operation of the corporation\(^{30}\). The Board of Trustees must file with the cemetery commissioner and the clerk of the corporation maps that describe the specifics related to land, location, and layout of the cemetery\(^{31}\) for a non-refundable fee of $50.

City Regulations
The City’s Zoning Ordinance regulates the location and appearance of cemeteries within the city. These regulations detail which zoning districts the cemeteries may locate. Our Zoning Code states that a cemetery can only exist as a conditional-use in R1, R2, and R3 zoning districts or the owner would need to get legislative approval if its construction was a part of a planned development project\(^{32}\). Section 61-12-132 states that cemeteries that abuts or is across the street from R1, R2, and R3 Districts are subject to a 20 foot yard between street and burial plots, land must be landscaped, and any warehouses, mausoleums, crematories, etc. cannot be located within 150 feet from the nearest residential property line.

The Detroit Parks and Recreation Department handles the preservation of local public cemeteries that are owned by the city. Currently, individual owners of cemeteries set by-laws within the confines of state law that they’ve deemed necessary to keep their grounds clean and organized.

Conclusion
The most critical requirements for opening a cemetery are compliance with local zoning property-related regulations, and fulfilling the requirements contained in the Cemetery Regulations Act, which articulates that owner’s level of experience and financial aptitude. The community’s need for a cemetery of the type sought, must also be examined, as well as, its physical location within the community. Determining the location of a cemetery requires consideration of public welfare, the prosperity of the surrounding community, in addition to the number and the capacity of existing cemeteries. There’s a perception that cemeteries lower the property value of surrounding homes and businesses. Therefore, taking into account the perspective of local communities and involving local community groups in the process is extremely important.

If we can be of any further assistance, please call upon us.

\(^{28}\) MCL 456.6
\(^{29}\) MCL 456.8
\(^{30}\) MCL 456.15
\(^{31}\) MCL 456.17
\(^{32}\) Chapter 61 Zoning Ordinance, section 61-12-27