

## ORDINANCE REGARDING CEMETERY PRESERVATION

WHEREAS, in 1995, the Douglas County Board of Commissioners identified the need to protect cemeteries and burial grounds in Douglas County and adopted the Douglas County Cemetery and Burial Ground Preservation Ordinance (“the ordinance”);

WHEREAS, the Douglas County Cemetery Preservation Commission has reviewed the ordinance and has recommended that certain provisions of the ordinance be updated.

NOW THEREFORE BE IT ORDAINED by the Douglas County Board of Commissioners that Article XIX of Chapter 6 of the Douglas County Code of Ordinances relating to cemetery and burial ground preservation be amended by striking Article XIX in its entirety and inserting in lieu thereof the following:

### **“Article XIX. CEMETERY AND BURIAL GROUND PRESERVATION**

#### **Sec. 6-310. Purpose and Intent**

Douglas County has been richly blessed with the heritage and history of its people who are now deceased, and many of these people, in their time, were native pioneers of Douglas County who have played an integral part in making this county what it is today; many of those who passed on have been memorialized with resting places in cemeteries, graveyards, and burial grounds that have been abandoned, desecrated, neglected, unmarked, and are threatened by unknowing development; such abandoned, desecrated, neglected, and unmarked cemeteries, graveyards, and burial grounds are not a befitting tribute to such honorable citizens of the past.

Therefore, it is the desire of the Douglas County board of commissioners to provide for the preservation, protection, and maintenance of all such family/community cemeteries, graveyards, and burial grounds.

The board of commissioners hereby declares it to be the purpose and intent of this article to establish a commission for the purpose of providing a uniform procedure for the identification, preservation, protection, and maintenance of cemeteries, graveyards, and burial grounds, in accordance with the provisions of this article.

#### **Sec. 6-311. Definitions**

(a) *Abandoned cemetery*: A cemetery which shows signs of neglect including, without limitation, the unchecked growth of vegetation, repeated and unchecked acts of vandalism, or the disintegration of grave markers or boundaries and for which no person can be found who is legally responsible and financially capable of the upkeep of such cemetery.

(b) *Archaeologist*: Any person who is:

(1) A member of or meets the criteria for membership in the Society of Professional Archaeologists and can demonstrate experience in the excavation and interpretation of human graves; or

(2) Employed on July 1, 1991, by the state or by any county or municipal governing authority as an archaeologist.

(c) *Burial ground*: An area dedicated to and used for interment of human remains including, without limitation, privately owned burial plots, individually and collectively, once human remains have been buried therein. The fact that the area was used for burial purposes shall be evidence that it was set aside for burial purposes.

(d) *Burial object*: Any item reasonably believed to have been intentionally placed with the human remains at the time of burial or interment or any memorial, tombstone, grave marker, or shrine which may have been added subsequent to interment. Such term also includes any inscribed or uninscribed marker, coping, curbing, enclosure, fencing, pavement, shelter, wall, stoneware, pottery, or other grave object erected or deposited incident to or subsequent to interment.

(e) *Cemetery or cemeteries*: Any land or structure in this state dedicated to and used, or intended to be used, for interment of human remains. It includes sites for earth interments or a mausoleum for vault or crypt interments or a combination of one (1) or more thereof.

(f) *DCCPC*: The Douglas County Cemetery Preservation Commission.

(g) *Descendant*: A person or group of persons related to a deceased human by blood or adoption in accordance with Title 19 or the Official Code of Georgia, and as may be amended from time to time.

(h) *Cemetery association*: An organization of individuals founded to preserve and maintain a cemetery.

(i) *Genealogist*: A person who traces or studies the descent of persons or families and prepares a probative record of such descent.

(j) *Human remains*: The bodies of deceased human beings in any stage of decomposition, including cremated remains.

(k) *Preserve and protect*: To keep safe from destruction, peril, or other adversity and may include the placement of signs, markers, fencing, or other such appropriate features so as to identify the site as a cemetery or burial ground and so as to aid in the preservation and protection of such cemetery or burial ground.

**Sec. 6-312. Creation.**

(a) *Creation of the Douglas County Cemetery Preservation Commission (DCCPC), members, number, appointment, terms.* The title of the commission shall be the “Douglas County Cemetery Preservation Commission” (DCCPC). The DCCPC shall consist of ten (10) members appointed by the board of commissioners, who shall be residents of the county who have demonstrated special interest in the identification, preservation, and maintenance of the county cemeteries and graveyards. The DCCPC may appoint an eleventh ex officio non-voting member who shall be an archeologist or other person with expertise in cemetery issues. Such ex officio member is not required to be a resident of Douglas County. Each member of the board of commissioners shall be entitled to appoint two (2) members to the commission. The term of each member shall run concurrently with and at the pleasure of the appointing commissioner’s term of office and until a successor is appointed and qualified. If an appointing commissioner is no longer in office due to a general election or a special election in which more than one (1) year remains in the commissioner’s term, any member appointed by such commissioner shall be subject to removal with or without cause and without regard to any un-expired term by the newly elected commissioner filling such seat. The newly elected commissioner shall have the right to appoint a new member to the DCCPC under the same requirements as his or her predecessor as set forth in this section. Members do not receive a salary and are not considered employees of the county by virtue of such appointment. All commission members shall be subject to any and all codes of ethics which may apply to the county board of commissioners. Members may be reimbursed for expenses if pre-approved by the board of commissioners.

(b) *Powers and duties of the DCCPC.* The DCCPC shall be authorized to:

(1) Formulate a county-wide cemetery preservation plan, including but not limited to:

- a. Identification and location of all cemeteries and burial grounds in the unincorporated county to the extent possible.
- b. Creation of a map containing all known cemeteries and burial grounds. This map once adopted by the Board of Commissioners may be used by all citizens, county departments, developers, and other interested parties.
- c. Determine status and needs of each cemetery and prioritize its need for essential maintenance to be performed. Such maintenance shall be designed to prevent the deterioration or loss of the burial ground and/or any burial objects it may contain. The intent of maintenance is to prevent a burial ground from being lost, becoming an eyesore, or a public nuisance that would invite

vandalism or other illegal activities. Such maintenance shall not compel repair or restoration by the County of any extant burial objects such as grave markers or the burial ground generally.

d. Establish and publish guidelines regarding cemetery preservation, maintenance, landscaping, security, development and other information.

e. Work with the Development Services Department ~~the planning and zoning department, the engineering department, and the building and inspection department.~~

f. Provide impact study statements on properties under review in the Development Services Department. ~~Work with the planning and zoning department, the engineering department, and the building and inspection department.~~

(2) Make recommendations in accordance with the purpose and intent of this ordinance to the board of commissioners, the planning and zoning commission, and the board of appeals on any zoning or variance applications involving properties containing cemeteries or burial grounds or properties adjacent to cemeteries or burial grounds.

(3) Recommend to the commissioners specific cemeteries and burial grounds determined to be abandoned or not maintained by the person legally responsible for the upkeep of the property on which the burial ground is located that:

a. Should be acquired by the county pursuant to O.C.G.A. 36-72-3.

b. Should be preserved and protected by the county.

Such recommendations should include a plan that provides regular maintenance such as removal of encroaching underbrush, leaves and leaf litter, storm debris, deadfall, and trash resulting from littering.

(4) Provide a plan for the preservation and maintenance of those cemeteries that have been placed under the jurisdiction of the county pursuant to section 6-313 or otherwise on an “as needed” basis. Public funds may be disbursed upon approval by the Board of Commissioners as may be needed under particular circumstances.

(5) Conduct educational programs regarding cemetery preservation as a means of increasing public awareness and support.

(6) Assist the county in any legal action, as required, regarding cemetery

relocation, maintenance, and security measures.

(7) Establish appropriate and necessary liaisons with other appropriate boards, commissions, county departments, organizations, and municipalities within the county.

(8) Provide guidance and suggestions to the county board of commissioners relative to ordinances dealing with cemeteries.

(9) Provide guidance and suggestions to the state legislature regarding changes/updates to Georgia Code relative to cemetery preservation.

(10) The DCCPC shall not financially obligate the county in any manner without the prior approval of the board of commissioners.

(c) DCCPC's power to adopt rules of procedure. The DCCPC shall adopt rules for the transaction of its business, officers and the elections and duties, provision for the time and place of regular meetings, and for the calling of special meetings. The DCCPC shall have the flexibility to adopt rules of procedures without amendment to this article. A quorum shall consist of a majority of its members. Robert's Rules of Order shall determine the order of business at all meetings.

(d) DCCPC's authority to receive funding. The DCCPC shall have the authority to accept donations in addition to county appropriated funds if such funds are approved by the board.

(e) DCCPC meetings. A record shall not be kept of the DCCPC's resolutions, proceedings and actions. All meetings shall be open to the public and comply with the Open and Public Meetings Law, O.C.G.A. 50-14-1 et seq.

**Sec. 6-313. Mitigation requirements for the preservation of burial grounds.**

The DCCPC may assist landowners in protecting burial grounds located on their property. Development standards that shall be required as part of the application process for a Land Disturbance Permit, building permit or preliminary plat on any parcel containing a cemetery or on any parcel adjacent to a cemetery include:

(1) A 25-foot natural undisturbed buffer around the perimeter of the outermost burials;

(2) A temporary tree protection fence installed on the outer perimeter of the 25-foot undisturbed buffer before any land disturbing activity begins;

(3) An appropriate permanent enclosure as may be required by the DCCPC and Development Services;

(4) A maintenance plan for a cemetery located on the parcel of land for which a Land Disturbance Permit or building permit is sought.

**Sec. ~~6-314~~ 6-313. Preservation of abandoned or improperly maintained cemetery or burial ground.**

If the board of commissioners determines that a cemetery or burial ground is abandoned or not being maintained by those legally responsible for the upkeep of the property upon which it is located, Douglas County is authorized:

(1) To preserve and protect such cemetery or burial ground, regardless of the financial ability of those legally responsible. The board of commissioners may then seek reimbursement from the person legally responsible for the upkeep of such cemetery or burial ground. If the responsible party fails to reimburse Douglas County, the board of commissioners may collect the amount owed by levying upon any property of the responsible person.

(2) To expend public money to preserve and protect such cemetery or burial ground, regardless of the financial ability of those legally responsible. The board of commissioners may then seek reimbursement from the person legally responsible for the upkeep of such cemetery or burial ground. If the responsible party fails to reimburse Douglas County, the board of commissioners may collect the amount owed by levying upon any property of the responsible person.

**Sec. ~~6-315~~ 6-314. Notification of discovery or disturbance of human remains, burial objects, cemeteries or burial grounds.**

(a) Any person who knows or has reason to know that a human burial ground or cemetery is being disturbed, destroyed, defaced, mutilated, removed, excavated, or exposed shall immediately notify the sheriff's department and the board of commissioners. The DCCPC shall be notified as soon as practical, by any county agent or agency of such reports.

(b) Any law enforcement agency or county department, or other source which finds evidence or receives a report that human remains or burial objects have been discovered or a report that a burial ground or cemetery has been located shall notify the Douglas County Coroner, the Douglas County Board of Commissioners, and the Douglas County Cemetery Preservation Commission, or cause such entities to be notified.

**Sec. ~~6-316~~ 6-315. Suspension of development or activity upon discovery of human remains or burial objects; establishment of protective buffer.**

(a) When human remains or burial objects are discovered, all activities that may

affect the burial ground shall immediately cease. After the discovering party has notified the Douglas County sheriff's department and the county coroner of the discovery, the owner or agent of the property, at their own expense, shall immediately take steps to determine the estimated number of graves and their approximate location through an archaeologist.

(b) Once the archaeologist has established the approximate boundaries of the cemetery or burial ground, a protective buffer shall be determined by the department of engineering. Such barrier shall meet the same buffer requirement listed in Sec. 6-313. In determining any additional requirements, the department of engineering shall consider the following non-exhaustive list of factors:

- (1) The slope of the land in and surrounding the boundaries;
- (2) The proximity of the burial ground or cemetery to any flood plains;
- (3) The proximity to any body of water or storm water runoff;
- (4) The natural vegetation within and surrounding the boundaries;
- (5) The nature of any land disturbing or development activity in the area adjacent to the boundaries; and
- (6) Any other factors determined relevant by the director of engineering.

(c) No activity may occur on the property where the cemetery or burial ground is discovered or on a neighboring property that will cause the destruction, defacement, mutilation, removal, or exposure of a burial place pending the application and appeal period.

(d) No activity shall resume within the protective buffer unless:

- (1) Authorization is received from the director of engineering or his or her designee; or
- (2) The burial disturbance application and appeal period is completed and the activity is in compliance:
  - a. With the terms of an approved burial disturbance permit as issued by the board of commissioners or as modified by the superior court or other reviewing court; and
  - b. With any applicable provisions of the Douglas County Code, including but not limited to the soil erosion and sedimentation control ordinance and the zoning regulations.

(e) The owner or agent may appeal the determination of the protective buffer by the director of engineering to the board of commissioners.

**Sec. ~~6-317~~ 6-316. Application for burial disturbance permit.**

Any person or entity seeking a burial disturbance permit from the board of commissioners pursuant to O.C.G.A. 36-72-4 shall comply with the following:

(1) An application shall be filed with the Board of Commissioners containing the following:

a. Evidence of ownership of the land on which the cemetery or burial ground is located in the form of a legal opinion based upon a title search.

b. A report prepared by an archaeologist stating the number of graves believed to be present and their locations as can be determined from the use of minimally invasive investigation techniques, including remote sensing methods and the use of metal probes, which activities shall not require a permit.

c. A survey prepared by or under the direction of a registered surveyor showing the location and boundaries of the cemetery or burial ground based on an archaeologist's report.

d. A plan prepared by a genealogist for identifying and notifying the descendants of those buried or believed to be buried in such cemetery. The applicant shall implement its plan for identifying, locating and giving notice to descendants no later than the date that the application is submitted to the board of commissioners.

1. After DCCPC review of the proposal, recommendations regarding the sufficiency of the application will be submitted to the board of commissioners. The commissioners may require the applicant to utilize additional reasonable methods to identify and locate descendants. Additional requirements imposed may include, but not be limited to, the following:

i. Newspaper notices in communities where descendants are believed or likely to be located.

ii. Further title research than is normally required on the property where the burial ground or cemetery is located or on adjacent property if it may assist in the identification of descendants.

2. The applicant shall notify possible descendants of their rights

under this ordinance and O.C.G.A. 36-72-1 et seq., and how to contact the board of commissioners for further information regarding any mitigation proposals, the terms of any permits issued, the time and place of any scheduled public hearings, appeal procedures and events.

3. If those buried or believed to be buried in the cemetery or burial ground are of aboriginal or American Indian descent, the genealogist must consult with the Council on American Indian Concerns created pursuant to O.C.G.A. 44-12-280. In such case, the notification shall include any American Indian tribes as defined in paragraph (2) of O.C.G.A. 44-12-280 that are culturally affiliated, as well as any known descendants of those presumed buried.

e. A proposal for mitigation or avoidance of the effects of the planned activity on the cemetery or burial ground. If the proposal includes relocation of any human remains or burial objects, the proposal shall specify:

1. The method of disinterment;
2. The location and method of disposition of the remains;
3. The approximate cost of the process; and
4. The approximate number of graves affected.

f. An application fee not to exceed two thousand five hundred dollars (\$2,500.00), which shall reflect the cost of the county:

1. To process and review the application;
2. To advertise and conduct a public hearing to consider the application;
3. To hire an attorney, if desired by the county, to assist in making recommendations regarding the applicant's plan;
4. To hire an independent archaeologist, if desired by the county, to assist in making recommendations regarding the applicant's plan;
5. To hire an independent surveyor, if desired by the county, to assist in making recommendations regarding the applicant's plan.

(2) A copy of the application, at its time of filing, shall be submitted to the DCCPC for additional review and recommendation to the board of commissioners.

**Sec. ~~6-318~~ 6-317. Public hearing on burial disturbance permit application.**

Fifteen (15) days after the board of commissioners is satisfied that all reasonable effort has been made by applicant to notify descendants, the board of commissioners shall set the date and time for a public hearing at which any interested party or citizen may appear and be given an opportunity to be heard on the issue of the burial disturbance permit application.

(1) The applicant shall be required to post a notice of the public hearing at the public road nearest to the burial ground and any other reasonable place that the board of commissioners may deem appropriate not less than thirty (30) days prior to a public hearing.

(2) The board of commissioners shall cause notice of the public hearing to be advertised in the legal organ of Douglas County once a week for the two (2) consecutive weeks immediately preceding the week in which the hearing is held.

**Sec. ~~6-319~~ 6-318. Decision on burial disturbance permit application.**

Burial grounds are part of the finite, irreplaceable and nonrenewable cultural heritage of the people of Douglas County, which should be protected. It is the intent of the Douglas County Board of Commissioners to require respectful treatment of human remains in accord with the equal and innate dignity of every human being and consistent with the identifiable ethnic, cultural and religious affiliation of the deceased individual as indicated by the method of burial or other historical evidence or reliable information. Three basic principles should guide the treatment of human remains, burial objects, and their historic context. The first is respect for the dead; the second is respect for the religious beliefs of all peoples; the third is the integrity of historic sites, because these sites are part of our common heritage.

(a) In determining whether to deny or grant the burial disturbance permit application, the board of commissioners shall consider the following issues:

(1) The presumption in favor of leaving the cemetery or burial ground undisturbed;

(2) The concerns and comments of any descendants of those buried in the burial ground or cemetery and any other interested parties;

(3) The balancing of the applicant's interest in disinterment with the public's and any descendant's interest in the value of the undisturbed

cultural and natural environment;

(4) The economic and other costs of mitigation;

(5) The adequacy of the applicant's plans for disinterment and proper disposition of any human remains or burial objects; and

(6) Any other compelling factors which the board of commissioners deem relevant.

(b) The board of commissioners shall notify the applicant in writing within thirty (30) days of the conclusion of the public hearing of its decision to:

(1) Deny the application for burial disturbance permit. Such notification shall include the reasons for the denial.

(2) Issue a permit adopting the application in whole or in part.

(3) Issue a permit, adopting the application in whole or in part, including additional requirements to mitigate the proposed activity's adverse effects on the cemetery or burial ground. Such requirements may include, but are not limited to:

a. Relocation of the proposed project;

b. Reservation of the cemetery or burial ground as an undeveloped area within the proposed development or use of land;

c. Respectful disinterment and proper disposition of the human remains.

**Sec. ~~6-320~~ 6-319. Appeal of decision on application for burial disturbance permit.**

Any applicant or descendant who is dissatisfied with a decision of the board of commissioners to grant or deny a burial disturbance permit may file an appeal in the superior court of the Douglas Judicial Circuit within thirty (30) days of such decision.

**Sec. ~~6-321~~ 6-320. Development activities pending appeal.**

(a) The applicant may not begin or resume any activities in the cemetery or burial ground until the thirty-day time period for appeal of the board of commissioners' decision has expired.

(b) The applicant may not begin or resume activities within the established

protective buffer surrounding the cemetery or burial ground pending the appeal unless approval is received from the director of engineering. The director of engineering may require written assurance from the applicant's archaeologist or an independent archaeologist that the proposed activity will not affect or harm the cemetery or burial ground.

(c) If an appeal is filed, the applicant may begin or resume activities which comply with the permit only:

(1) Upon consent of the board of commissioners and the party seeking judicial review; or

(2) Upon order of the reviewing court for good cause shown.

**Sec. ~~6-322~~ 6-321. Disinterment and disposition of human remains or burial objects.**

The applicant's archaeologist shall supervise, monitor and carry out any disinterment and disposition of human remains or burial objects permitted by the ordinance. All associated costs shall be borne by the permit recipient.

**Sec. 6-323. Burial Disturbance Permit Expiration and Non-transferability**

(a) A burial disturbance permit shall expire if the relocation activity described in the permit is not in compliance with the original approval by the Board of Commissioners. Any such expired permit may be renewed by the BOC following the same procedures as the original approval.

(b) A burial disturbance permit may convey to a new owner if the original applicant transfers ownership of the property before cemetery relocation takes place if the new owner complies with all of the terms and conditions of the approved permit and relocation plan.

**Sec. ~~6-324~~ 6-322. Inspection and enforcement.**

(a) This article may be enforced by the sheriff's department, the engineering department, the planning and zoning department, or other person designated by the board of commissioners.

(b) The department of engineering and/or the planning and zoning department shall have the authority to issue a stop work order to obtain compliance with this article.

(c) The board of commissioners shall cause inspections as necessary to determine whether the applicant has complied with the provisions of this article requiring cessation or limitation of activity and to determine whether the applicant has

complied with the terms of the permit as issued by the board of commissioners or as modified by the superior court or other reviewing court.

**Sec. ~~6-325~~ ~~6-323~~. Prohibited Acts.**

(a) It shall be a violation of this article to knowingly disturb, destroy, deface, mutilate, remove, excavate or expose a burial place without first obtaining a burial disturbance permit from the board of commissioners as required by O.C.G.A. 36-72-1 et seq., or as it may be amended from time to time, and following the requirements of this article.

(b) It shall be a violation of this article to fail to report the discovery of human remains or burial objects to the Douglas County sheriff's department, Douglas county coroner, the DCCPC, or the Douglas County board of commissioners.

(c) It shall be a violation of this article to fail to report the disturbance of any human remains, burial objects, cemeteries or burial grounds to the Douglas County sheriff's department.

(d) It shall be a violation of this article to fail to observe the provisions of section 6-316, section 6-321, or the protective buffer requirements imposed by the department of engineering.

(e) It shall be a violation of this article to fail to observe the conditions and provisions of a burial disturbance permit granted by the board of commissioners.

**Sec. ~~6-326~~ ~~6-324~~. Penalties.**

(a) Any violation of the provisions of this article by any person is hereby deemed to be a misdemeanor.

(b) In addition to any other remedy provided herein, Douglas County may seek injunctive relief to cease and remove any violations of this ordinance in the appropriate court against the appropriate person or entity.

(c) In addition, any violation of this article is hereby deemed to be a continuing nuisance, and may be abated by an application for injunction or other proceeding allowed by law in the appropriate court.

**Sec. ~~6-327~~ ~~6-325~~. Effective date and validity.**

(a) *Effective date.* This article shall become effective on the twentieth day of June, 1995.

(b) *Validity.* If any section, subsection, paragraph, clause or provision of this article shall be adjudged invalid or held unconstitutional, such decisions shall not

affect the remaining portions of this article.

**Secs. ~~6-3286-326~~—6-330. Reserved.”**

BE IT FURTHER ORDAINED that all ordinances and resolutions in conflict with this ordinance are hereby repealed; and

BE IT FURTHER ORDAINED that this amendment shall become effective on December 2, 2008.

\_\_\_\_\_  
Tom Worthan, Chairman

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Freddie Ashmon, Jr., District I

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Charles Camp, District II

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Michael Mulcare, District III

\_\_\_\_\_  
David Latham, District IV

Attest:

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Lisa Watson, County Clerk