

Article 24 - Cemetery Establishment and Preservation

24.1 Purpose and Intent

Considering the fact that this County has been richly blessed with the heritage and history of its people who are now deceased; that many of these people, in their time, were native pioneers of the County who have played an integral part in making this County what it is today; that many of those who have 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; and that 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 Board of Commissioners of Cherokee County to provide for the preservation, protection, and maintenance of all such family and community cemeteries, graveyards, and burial grounds.

24.2 Definitions

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

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.

Archaeologist. Any person who is 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.

Burial ground. An area dedicated to and used for interment of human remains. The fact that the area was used for burial purposes shall be evidence that it was set aside for burial purposes.

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 terms also mean any inscribed or uninscribed marker, coping, curbing, enclosure, fencing, pavement, shelter, well, stoneware, pottery, or other grave object erected or deposited incident to or subsequent to interment.

CCCPC. The Cherokee County Cemetery Preservation Committee.

Cemetery. A place dedicated to and used, or intended to be used, for permanent interment of human remains. A cemetery may contain land or earth interments; mausoleum, a vault, crypt interments; a columbarium or other structure or place used or intended to be used for the inurnment of cremated human remains; or any combination of one or more of such structures or places.

County Coroner. A person elected pursuant to law as county coroner.

Descendant. A person or group of persons related to a deceased human by blood or adoption in accordance with O.C.G.A.' 19-1-1 et.seq., as amended.

Family Burial Ground. A defined plot of land upon which are located not more than approximately 20 graves.

Genealogist. A person who traces or studies the descent of persons or families and prepares a probative record of such descent.

Human remains. The bodies of deceased human beings in any stage of decomposition, including cremated remains.

Marker. A small individual memorial placed at either the head or foot of a grave. This is sometimes referred to as a headstone or footstone.

Notifying. To develop and implement a plan pursuant to O.C.G.A.' 36-72-5, as amended.

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.

Private Cemetery. A cemetery used only by a small segment of a community or by a family, where burials or interments of human remains are made, in which sales or transfers of interment rights or burial plots are not made to the public and in which not more than twenty (20) interments or burials occur annually. Generally, the private cemetery will not exceed ten (10) acres in area.

Public Cemetery. A cemetery open for use by the community at large, where burials or interments of human remains are made, in which sales or transfers of interment rights or burial plots are made available to the public and in which there is no limit on the interments or burials annually. Cemeteries established after the effective date of this ordinance will donate seven (7) percent of the total available burial sites to the County for indigent burials.

24.3 Authority and Delegation

Cherokee County Cemetery Preservation Committee (CCCPC) – The CCCPC shall maintain a record and inventory of the locations of all cemeteries established and permitted pursuant to this article, this includes maintaining original plat of surveys of each new cemetery approved under this code. The committee is also responsible for helping to set policy in the County concerning cemeteries and engaging in public education concerning the importance of cemetery preservation.

County Coroner – The County Coroner is responsible for determining the boundaries of cemeteries discovered during the course of land disturbance.

Planning Director – The Director of Planning and Land Use or designee shall be responsible for reviewing and approving permits for new cemeteries and making recommendations to the Board of Commissioners on cemetery preservation applications.

24.4 Enforcement Officers

All law enforcement agencies, officers, certified peace officers, and/or officials of the state, or any county code enforcement officer, are hereby authorized, empowered, and directed to enforce compliance with this article.

24.5 Penalties for Violations

It shall be unlawful for any person to operate a cemetery in the unincorporated area of the county unless done so in compliance with the provisions of this section.

- A. Violators of the provisions of this chapter shall be subject to the penalties set forth in Article 19 – Remedies and Enforcement of this Code.

- B. Any violation of the provisions of this article by any person is hereby deemed to be a violation of a County Ordinance and punishable in the Magistrate Court of Cherokee County. The zoning administrator, the County's code enforcement personnel, or any law enforcement officer of the County is hereby authorized and directed, upon discovery of any violation of any provision of this article, to issue a citation for the violator to appear before the appropriate Court on a day and time certain to answer to the misdemeanor charges.
- C. In addition to any other remedy provided in this article, the County may seek injunctive relief to cease and remove any violations of this article in the appropriate court against the appropriate person or entity.
- D. Any violation of this article is hereby deemed to be a continuing nuisance and may be abated by an application for injunction or other proceedings allowed by law in the appropriate court.

24.6 Burials

It shall be unlawful for any undertaker or any other person to bury or cause to be buried, or to in any manner aid or assist in the burial of the dead body of any human being in any cemetery or location in the unincorporated area of the county other than an authorized public cemetery or a private cemetery established and approved pursuant to this chapter.

24.7 Operation

It shall be the sole responsibility and duty of the owner, creator, trust or other legal entity which shall own, supervise or have control of a cemetery to ensure that the same shall not at any time constitute a health hazard or be or constitute a nuisance. The owner, creator, trust or other legal entity, which shall own, supervise or have control of a cemetery shall have the right and responsibility of creating rules and regulations necessary to or appropriate for the operation of such cemetery.

24.8 Creation of nuisances

No owner, creator, trust or other legal entity which shall own, supervise or have control of a cemetery shall allow such cemetery to accumulate weeds, trash, junk, filth, or other unsanitary or unsafe conditions so as to create a public health hazard or a general nuisance to those persons residing in the vicinity.

24.9 Cemetery Creation Requirements

A. Permits

No cemetery shall be allowed in the unincorporated area of Cherokee County without the owner, creator, trust or other legal entity having first applied for and obtained from the Planning and Land Use Department, a permit approving the operation thereof. In addition to any other requirements set forth in this chapter, no permit will be granted without compliance with the following:

1. Survey

A plat of survey of the cemetery prepared by a state-registered land surveyor shall be submitted to the Planning and Land Use Department along with the application. Upon approval of the survey by Planning and Land Use, the applicant shall file, or cause to have filed, two signed original copies of the survey with the Superior Court Clerk for recording.

2. Minimum area

No cemetery shall be approved unless the survey provided for in this chapter indicates that the cemetery contains not less than two acres, the entire area of which shall be dedicated to and used only for cemetery purposes.

3. Land use compatibility

The location of the proposed cemetery is to be compatible with adjacent land uses, existing or proposed highways and any other elements or factors deemed by the county to affect the public health, safety and welfare of the inhabitants of the area surrounding the proposed location, including but not limited to the effect on aquifers, wells and ground water, the potential for pollution of nearby streams, lakes and other waters and the suitability of the soil composition for such use. Under no circumstances shall a cemetery be allowed within 250 feet from any known well, aquifer, lake or stream which in the determination of EPD requires a stream buffer.

4. Buffer area

The proposed location must contain a buffer area that is landscaped with trees and/or shrubbery on all sides of the site that is identified on the survey and is not less than ten (10) feet in width.

5. Flood prevention

No cemetery shall lie in whole or in part within a floodplain and certification of the same must be provided upon the survey shown on the latest FEMA flood maps.

6. Identification of boundaries

The boundaries of the proposed cemetery must be clearly marked and delineated by concrete or metal pins or other permanent means of identification. No burials shall be permitted within fifty 50 feet of adjacent property lines.

7. Ingress and egress

Adequate access, ingress and egress to and from the cemetery must be available by public road or private drive.

B. Additional Requirements

1. Fencing shall be installed around the perimeter of the cemetery of sufficient height and strength to keep dogs and wild animals from accessing the cemetery.
2. Any land disturbances in the construction of a cemetery must be subject to all sediment erosion and ground water run-off requirements applicable to other development projects as set forth in the ordinances and regulations of Cherokee County, Georgia.
3. All graves must be marked with an appropriate marker as defined herein that will allow law enforcement authorities to locate graves if necessary for any lawful purposes after interment.
4. All cemeteries shall be subject to the requirements of state law and regulations in effect or as they may exist in the future with regard to perpetual care, re-interment of remains and any such other conditions as may require remediation.
5. All human remains shall be buried in receptacles meeting state standards to protect against contamination of ground water, wells, and aquifers.
6. No human remains shall be buried less than the depth that is customarily used in the funeral industry in Georgia and in accordance with minimum standards for interment as may be adopted by the Secretary of State.

7. Remains of persons who die from communicable diseases must be buried by and under the supervision of a licensed funeral director in accordance with the rules and regulations of the State Funeral Service Board.
8. Human remains must be buried before they begin to decompose as evidenced by odor, or create a danger to the health, safety and welfare of others.

C. Health department approval

The approval of the proposed cemetery must be obtained from the Cherokee County Health Department and submitted with the application.

D. Appeal from denial

Appeals from the denial of a permit authorized by this section shall be to the Board of Commissioners of Cherokee County.

E. Exemption

Any cemetery which as of the effective date of this ordinance has received all necessary state, local and federal permits, has otherwise met all legal requirements to operate, is fully operational and is lawfully receiving human remains for burial, shall be exempt from the requirements of this chapter.

24.10 Cemetery Discovery and Preservation

1. Exemption for Identification of Burial Grounds

The County Coroner is exempt from the requirements of this article for the purposes of identification of burial grounds by probing, magnetometer, or such other processes recognized by the archaeological community.

2. Notification of Disturbed Burial Ground

- i. Any person who knows or has reason to know that a human burial is being disturbed, destroyed, defaced, mutilated, removed, excavated, or exposed shall immediately notify the local law enforcement agency with jurisdiction in the area where the burial ground is located.
- ii. Any law enforcement agency, County department, or other source which finds evidence or receives a report that a burial ground has been located or disturbed shall notify the County Coroner and the CCCPC.

- iii. When human remains are discovered, all land disturbing activities that may affect a burial ground shall immediately cease and the discovering party shall notify the local law enforcement agency and the medical examiner of the discovery. Within 48 hours, the medical examiner and local law enforcement shall determine whether or not the grave is part of a cemetery. If it is determined that the grave is part of a cemetery, then the County Coroner shall undertake efforts to identify and preserve the burial ground. The property owner shall also be required to run an ad in the legal section of the Cherokee County legal organ to notify any interested parties of the cemetery discovery. If it is determined that it is not a cemetery site, then the local law enforcement agency, in conjunction with the medical examiner, shall be responsible for proper disposition of the remains. Once the County Coroner has established the approximate boundaries of the burial ground, there shall be established a protective buffer not less than fifty (50) feet and a six (6) foot high chain link fence with proper access from the development to the cemetery provided. An appeal of this determination may be made to the Zoning Board of Appeals. No land disturbing activity shall resume without the express written authorization from the County Coroner or his designee.
- iv. When the buffer requirement shall apply to a cemetery developed in connection with a church; the buffer requirement shall extend from the property line of the church property.
- v. The above requirement shall not apply for those residential lots established for legacy purposes.

3. Prohibited Acts

- i. It shall be a violation of this article to willfully disturb, destroy, deface, mutilate, remove, excavate or expose a burial place without first obtaining a permit pursuant to 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.
- ii. It shall be a violation of this article to fail to report the discovery of human remains or to notify the local authority of the disturbance of a burial ground.
- iii. It shall be a violation of this article should any person or entity seeking a permit to disturb a burial place pursuant to O.C.G.A.'36-72-1 et.seq., as may be amended from time to time, and not follow the provisions of this article.
- iv. It shall be a violation of this article for any person or entity to fail to comply with the provisions of an approved permit.

4. Cemetery Preservation Application

Any person or entity seeking a permit to develop land on which a cemetery is located pursuant to O.C.G.A.'36-72-4 shall first comply with the following:

- i. An application shall be filed with the Planning and Land Use Department including the following information:
 - 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 such 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.
- 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

5. Cemetery Preservation Process

- i. The application shall be submitted to the Planning Director for review and recommendations. The Planning Director shall be charged with making recommendations regarding the sufficiency of the application submitted as to the following:
 - a. Notice of descendants.
 - b. The plan for mitigation and avoidance.
 - c. The disturbance and adverse effects on the cemetery or burial ground.
 - d. The survey of the cemetery.
 - e. The plans for disinterment and reinterment.

The Planning Director may consult with any County staff, committees or individuals that might have an interest in the application in order to prepare the recommendations.

- ii. The Planning Director shall make a written recommendation within 30 days to the Board of Commissioners or the Superior Court of the County, which ever may have jurisdiction.
- iii. Within 15 days after the Board of Commissioners is satisfied that all reasonable efforts has been made to notify descendants, as provided in O.C.G.A.'36-72-6, the Board of Commissioners shall schedule a public hearing at which any interested party or citizen may appear and be given an opportunity to be heard. In addition to the notice required by O.C.G.A.'36-72-6, notice of the public hearing shall be advertised in the legal organ of the County once a week for two consecutive weeks immediately preceding the week in which the hearing is held. The applicant shall be required to post notice signs at the nearest public road and the burial ground not less than 60 days prior to a public hearing to be conducted by-the Board of Commissioners.

- iv. Within 30 days after the conclusion of the public hearing, the Board of Commissioners of Cherokee County shall notify the applicant in writing of its decision. The Board of Commissioners shall have the authority to deny the application, with written reasons therefore, to issue a permit adopting the application in whole or in part, or to issue a permit, which may include additional requirements to mitigate the proposed activity's adverse effects on the cemetery or burial ground, including, but not limited to, relocation of the proposed project, reservation of the cemetery or burial ground as an undeveloped area within the proposed development or use of land, and respectful disinterment and proper disposition of the human remains. The Board of Commissioners may adopt the applicant's proposal for mitigation.
- v. The Board of Commissioners shall consider the following in making its determination:
 - The presumption in favor of leaving the cemetery or burial ground undisturbed.
 - The concerns and comments of any descendants of those buried in the burial ground or cemetery and any other interested parties.
 - The economic and other costs of mitigation.
 - The adequacy of the applicant's plans for disinterment and proper disposition of any human remains or burial objects.
 - The balancing of the applicant's plans for disinterment with the public's and any descendant's interest in the value of the undisturbed cultural and natural environment.
 - Any other compelling factors which the governing authority deems relevant.
- vi. Should any applicant or descendant be dissatisfied with a decision of the Board of Commissioners, he may file an appeal, within 30 days of such decision, in the County Superior Court. Until the expiration of time for appeal as set forth in O.C.G.A.'36-72-11, the applicant shall not begin or resume activities which comply with the permit issued by the Board of Commissioners. If an appeal is filed, the applicant may begin or resume activities which comply with the permit only upon consent of the Board of Commissioners and the party seeking judicial review or upon the order of the reviewing court for good cause shown.
- vii. The County Coroner shall be responsible for inspecting and determining whether the provisions of the permit have been properly completed.
- viii. Notwithstanding any provisions of this article to the contrary, when any agency, authority, or political subdivision of the state seeks to file an application for a permit under this article, the County Superior Court shall have exclusive jurisdiction over the permit application. The Superior Court shall conduct its investigation and determination of the permit in accordance with O.C.G.A.'36-72-6 through 36-72-8, as may be amended from time to time.

B. Same Fees

The fee for filing an application for a permit under this article shall be established by the Board of Commissioners pursuant to O.C.G.A.'36-72-10, as may be amended from time to time.

24.11 Cemetery Preservation Committee

A. Purpose

The Board of Commissioners hereby declare it to be the purpose and intent of this division to establish a committee for the purpose of providing a uniform procedure for the identification,

preservation, protection, and maintenance of cemeteries, graveyards, and burying grounds, in accordance with the provisions of this article.

B. Created; Appointment of Members; General Powers

The title of the committee established by this article shall be the Cherokee County Cemetery Preservation Committee. The Board of Commissioners, one appointment per Commissioner shall appoint committee members, and shall have the powers and authority as designated by this article or as directed by the Board of Commissioners. All committee members shall be subject to any and all codes of ethics which may apply to the Board of Commissioners.

C. Position within County Government

The CCCPC shall be considered a part of the planning and land use function of the County.

D. Composition; Terms and Compensation of Members

The CCCPC shall consist of five 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 County cemeteries and graveyards. Each member of the Board of Commissioners shall be entitled to appoint one member to the committee. 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 year remains in that Commissioner's term, any member appointed by that Commissioner shall be subject to removal with or without cause and without regard to any unexpired term of the newly elected Commissioner filling such seat. The newly elected Commissioner shall have the right to appoint a new member to the committee under the same requirements as his/her predecessor as set forth in this section. Members do not receive a salary, although they may be reimbursed for expenses if such expenses are approved by the Board of Commissioners.

E. Powers Enumerated

1. The cemetery preservation committee shall be authorized to:
 - i. Formulate a Countywide cemetery preservation plan that shall include but not be limited to:
 - a. Determine the identification and location of all known cemeteries in the County.
 - b. Determine the status and needs of each cemetery and prioritize rehabilitation.
 - c. Establish and publish guidelines regarding cemetery preservation, maintenance, landscaping, security, development, and other information.
 - d. Establish procedures within the County Planning and Zoning department and with the County Coroner regarding the review of zoning and variance applications involving cemeteries or property immediately adjacent to cemeteries; provide recommendations to the Planning Commission, Cherokee County Cemetery Preservation Committee, and Board of Commissioners on all zoning and variance applications within the purview of this article; and assist the development and inspections department regarding the enforcement of all such stipulations and conditions.

- ii. Recommend to the Board of Commissioners specific cemeteries and graveyards that have been determined to be abandoned or not maintained and should be acquired by the County under O.C.G.A.'36-1-23.
- iii. Provide for the preservation and maintenance of those cemeteries that have been placed under jurisdiction of the County and; on an as needed basis, private or family cemeteries that do not have the financial ability to properly maintain a cemetery if such funds are approved by the Board of Commissioners.
- iv. Conduct educational program regarding cemetery preservation as a means of increasing public awareness and support.
- v. Assist in legal research and legal action, as required, regarding cemetery relocation, maintenance, and security measures as defined by state statute or County ordinance.
- vi. Establish appropriate and necessary liaisons and contacts with other appropriate boards, commissions, departments, organizations, and municipalities within the County.
- vii. Provide guidance and suggestions to the Board of Commissioners relative to ordinances dealing with cemeteries.
- viii. Provide guidance and suggestions to the state legislature regarding changes and updates to the state code relative to cemetery preservation.
- ix. The cemetery preservation committee shall not financially obligate the County in any manner without the prior approval of the Board of Commissioners.

F. Rules of Procedure

The cemetery preservation committee shall adopt rules for the transaction of its business, officers and their election and duties, provisions for the time and place for regular meetings, and for the calling of special meetings. The committee shall have the flexibility to adopt rules of procedure without amendments 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 times.

G. Funding

The cemetery preservation committee shall have the authority to accept donations in addition to County appropriated funds if the Board of Commissioners approves such funds.

H. Records; Meetings

A public record shall be kept of the cemetery preservation committee's resolutions, proceedings and actions. All meetings of the committee shall be open to the public.