

# **SUBTITLE 13**

# **CEMETERY PRESERVATION**

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CEMETERY PRESERVATION**

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## **Section 16.1300. Short Title; Background; Purpose.**

- (a) **Short Title:** This Subtitle shall be known as the Cemetery Preservation Act of Howard County.
- (b) **Background:** This Subtitle arose out of the attempted development of a particular cemetery in Howard County, which highlighted the need for greater protection for old cemeteries and burial grounds from development.
- (c) **Purpose:** The purpose of this Subtitle is to foster preservation of cemeteries and burial grounds in Howard County.

## **Section 16.1301. Definitions.**

Cemetery means any land or structure used or intended to be used for the interment of human remains. The sprinkling of ashes or their burial in a biodegradable container or their placement in a columbarium shall not constitute the creation of a cemetery. The term "cemetery" shall include the terms "graveyards" and "burial grounds."

## **Section 16.1302. Cemetery Preservation Advisory Board.**

- (a) **Establishment:** There is hereby established a Cemetery Preservation Advisory Board to carry out the purposes of this Subtitle.
- (b) **Membership and Appointment:**
  - (1) **General provisions:** General provisions applicable to this Board are set forth in [Section 6.336 of] Subtitle 3, "Boards and Commissions," of Title 6, "County Executive and the Executive Branch," of the Howard County Code.
  - (2) **Number of members:** The Board shall have a membership of 7 persons.
  - (3) **Qualifications:**
    - (i) Five members of the Board shall be residents of Howard County;
    - (ii) One of the members shall be a member of the development-building industry;
    - (iii) One of the members shall be a representative of the religious community;
    - (iv) One of the members shall be a member of the funeral-cemetery business;
    - (v) Two of the remaining members shall be qualified by special interest, knowledge, or training in such fields as history, architecture, preservation, genealogy, and urban design, and who have knowledge of and demonstrated an interest in the preservation of old burial grounds and cemeteries;

- (vi) Two members shall represent the general public.

### **Section 16.1303. Inventory of Cemeteries.**

- (a) ***Establishment of Inventory:*** The Department of Planning and Zoning, in cooperation with the Cemetery Preservation Advisory Board, shall propose, and the County Council shall establish, an inventory of all known cemeteries in the county, together with a description of the geographical location of each and a record of the owners of each burial ground.
- (b) ***Maintenance of Cemetery Inventory Map:*** The Department of Planning and Zoning shall maintain a current map which depicts the location of all known cemeteries in the county based on the above inventory.

### **Section 16.1304. Development or Subdivision in a Cemetery.**

- (a) ***Accommodation:*** When a property owner proposes to develop a property, through submission of a subdivision sketch plan, preliminary equivalent sketch plan, or a site development plan, on which is located a cemetery which is shown on the inventory map, the property owner shall:
  - (1) Accommodate the cemetery with the development, by placing the cemetery in a non-buildable lot with a cemetery designation, by dedicating the cemetery to a homeowner's association or a preservation, conservation or religious organization, by providing that the cemetery be used as a cemetery in perpetuity, and by providing public access to the cemetery. Any land placed in a non-buildable cemetery lot designation pursuant to this section may be counted towards open space requirements. Alternatively, a property owner may leave the deed to the cemetery in the private ownership and care of a family;
  - (2) Conduct a title search of the parcel extending back to the original patent to ascertain whether covenants relating to the cemetery had been executed;
  - (3) Establish the boundaries of the cemetery as approved by the Department of Planning and Zoning whenever the cemetery boundaries are either not well defined or in dispute, using any or all of the following methods:
    - (i) Historical documentation;
    - (ii) Professional archaeology;
    - (iii) Ground-penetrating radar;
    - (iv) Oral history, claims of descendants, vital records;
    - (v) Proton magnetometry; and/or
    - (vi) Other approved nondestructive techniques.

- (b) **Accommodation at Preliminary or Final Plan:** If a cemetery is discovered after the approval of sketch plan or preliminary equivalent sketch plan or if a sketch plan is not required to be submitted, then all the requirements of [this] section 16.1304 shall apply to the submission of a preliminary subdivision plan or a final subdivision plan for a property that contains a cemetery.
- (c) **Submission of Cemetery Boundary Documentation and Accommodation Plan:** Once the property owner determines the boundaries of the cemetery using one or more of the foregoing methods, the property owner shall submit to the Department of Planning and Zoning the documentation of the boundaries of the cemetery, and a plan showing how the cemetery will be accommodated with the development and how public access to the cemetery will be provided, in accordance with Subsection (a) above.
- (d) **Meeting:** The Department of Planning and Zoning shall forward the information provided in Subsections (a) and (c) above to the Planning Board. The board shall consider this information at a regular Planning Board meeting.
- (e) **Recommendation; Decision:** The Planning Board shall make a recommendation to the Department of Planning and Zoning on the property owner's plan. The Department of Planning and Zoning shall expeditiously make a final decision on the matter. In the event that the Department of Planning and Zoning determines that an accommodation of the cemetery with the development cannot reasonably be accomplished without denying the property owner reasonable use of its entire property, then the Department of Planning and Zoning shall require the property owner to develop, and it shall approve, a plan for appropriate treatment of the cemetery in accordance with State law.

### **Section 16.1305. Discovery of Cemetery.**

- (a) **Discovery:** If any person discovers the existence of previously unknown human remains, tombstones, funerary objects, or other evidence of a cemetery which reasonably indicates the presence of a cemetery in the course of grading, construction or work of any kind, that person shall stop work immediately in the discovered area and shall give notice of its discovery within 24 hours to the state's attorney, the county health officer, the Department of Planning and Zoning, the Department of Public Works, and the Department of Inspections, Licenses and Permits. All permits issued by the Department of Inspections, Licenses and Permits relating to the discovered area shall be suspended and the property owner shall stop all work in the discovered area until a determination is made pursuant to subsection (b) of this section.
- (b) **Determination:** The Department Planning and Zoning, in consultation with the Cemetery Preservation Advisory Board, shall determine if the discovered area provided in subsection (a) above is a cemetery. In making this determination, the Department of Planning and Zoning, in consultation with the Cemetery Preservation Advisory Board, may require the property owner to comply with section 16.1304(a)(2) and (3). If it is determined that the area is not a cemetery, the stop-work order shall be lifted and the suspended permits released by the Department of Inspections, Licenses and Permits.
- (c) **Cemetery protection:** If it is determined that the discovered area is a cemetery, the property owner shall comply with the requirements of section 16.1304 of this Subtitle. However, the

Department of Planning and Zoning, in consultation with the Cemetery Preservation Advisory Board, may waive these requirements in a discovery situation, on a case-by-case basis, based on the criteria for waivers of the subdivision regulations contained in Section 6.104 of the Howard County Code.

### **Section 16.1306. Removal prior to development.**

If a property owner removes human remains from a cemetery prior to entering the development or subdivision process, then any subsequent development of the area formerly occupied by the cemetery shall be prohibited.

### **Section 16.1307. Appeal.**

Any person specially aggrieved by any decision of a county agency made under this Subtitle may, within 30 days thereof, appeal the decision to the Board of Appeals of Howard County.

### **Section 16.1308. Enforcement.**

Where there is any violation of this Subtitle or any action taken thereunder Howard County shall institute appropriate action to compel compliance with the provisions of this Subtitle. In addition to and concurrent with all other remedies, Howard County may enforce the provisions of this Subtitle with civil penalties pursuant to the provisions of Title 24, "Civil Penalties," of the Howard County Code. A violation shall be a Class A offense.

### **Section 16.1309. Severability.**

If any portion of this Subtitle is held invalid or unconstitutional, the invalidity or unconstitutionality of that portion shall not affect the remaining portions of the Subtitle.