



Dane County Planning & Development Zoning Division

TO: Dane County Zoning and Land Regulation Committee

FROM: Hans Hilbert, Interim Zoning Administrator

DATE: June 5, 2026

RE: Ordinance Amendment 2026 OA-006 regarding cemeteries

Ordinance Amendment 2026 OA-006, regarding cemeteries was introduced at the June 4, 2026 County Board meeting. Inclusion of this item on the June 9, 2026 work meeting of the ZLR is to obtain feedback on the merits of the amendment and provide an opportunity for staff to prepare substitute language prior to setting a public hearing.

As an amendment to Chapter 10, towns under County Zoning jurisdiction have the option to review and provide action on the amendment. The 30 day town review period begins immediately following a public hearing on the matter before the ZLR.

Please direct any questions to Hans Hilbert at 608-266-4993, or hilbert.hans@danecounty.gov.

I. Summary

The proposed amendment seeks the following changes:

- Establish that home and private property burials are not a cemetery use.
- Indicate that home and private property burials are an incidental use to a permitted principal use of a property.

II. Description

In the past year, Dane County Zoning staff have received an increased number of requests from property owners seeking approval to bury human remains on their property. Under the current Chapter 10 definition a cemetery is defined as “Any land, that is used, or intended to be used, for the burial of human remains”, and further provides examples of cemeteries “including, but not limited to, cemeteries, mausoleums, columbarium and burial chapels.” Under this definition, it has been interpreted that any burial of human remains is considered a cemetery. Within zoning districts, cemeteries are either listed as a permitted or conditional use. If it is not listed in a district, it is a prohibited use.

Cemeteries are permitted by right in the Hamlet and Heavy Commercial districts. They are conditional uses in Recreation, Agricultural Transition-5, Rural Mixed Use, Rural Residential, Limited Commercial, and General Commercial districts. They are prohibited in the Natural Resource Conservation, Farmland Preservation¹, Agricultural Transition-35, Agricultural Business, Industrial, and Utility districts.

¹ Permitted and Conditional land uses within farmland preservation districts must conform to the limitations of Wis. Stat. Ch. 91, which do not include cemeteries as defined by state statute.

Prior to the comprehensive rewrite of Chapter 10 in 2018 the definition of a cemetery was, "Shall include, but not be limited to, cemeteries, mausoleums, columbarium and burial chapels. Shall be subject to section 157.06 of the Wisconsin Statutes." This previous definition aligns closer to the statutory definition of a cemetery found in Wis. Stat. Ch. 157.061, "'Cemetery' means any land, including any mausoleum on the land, that is used or intended to be used, *exclusively* for the burial of human remains" (emphasis added).

Under state statute cemeteries shall only be organized and operated by a municipality, a religious association, a fraternal or benevolent society, an incorporated college of a religious order, a cemetery association, a corporation, or a limited liability company. Under state statute home and private property burials are not defined as cemeteries. The Wisconsin Historical Society, which requires reporting of home or private burial sites, states that local ordinances determine if a property may be used for human burial.

III. Proposed Amendment

The proposed OA modifies the Chapter 10 definition of Cemetery by including a clause that specifies the term does not include private burial sites which are incidental to a permitted principal use. This language would allow private burial in any district as an incidental or accessory use to a principal land use such as the residential use of a property. This would return interpretation of this land use to that prior to the comprehensive rewrite of the zoning ordinance.

IV. Considerations

In the drafting of this ordinance amendment, Corporation Counsel has opined that it should not be adopted as worded, as doing so would be with broad permission. The ZLR should consider reasonable limitations on private burial sites regarding the purpose of the zoning ordinance, generally in the promotion of the public health, safety, convenience and general welfare. Specifically, the ZLR should consider the permanent heritage of the land use and the impact on orderly land use development, and property values and tax base.

V. Staff Recommendations

Planning and Development staff recommend the ZLR consider replacing the Chapter 10 definition with that found in state statute. This further defines that a cemetery is a principal and exclusive land use, as opposed to an incidental or accessory use. Retaining the existing examples and added verbiage excluding private burial sites is also recommended to provide for clarity of interpretation.

It is also recommended to consider establishing general provisions applicable to all zoning districts (10.102) specific to human burial sites. This would allow for restricting private burial sites in areas where such a use would be incompatible proximity of adjacent land uses, lot area, or future development needs. Examples may include lands within the urban service area, SFR zoning districts, and on nonconforming parcels.

Following any requests for substitute language, staff recommends setting a public hearing for the ordinance amendment and providing notice to the towns under county zoning authority.