



Dane County Planning & Development Zoning Division

TO: Dane County Town Board Chairs and Clerks

FROM: Hans Hilbert, Interim Zoning Administrator

DATE: September 3, 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. After a discussion of the item on the June 9, 2026, work meeting of the Zoning and Land Regulation Committee (ZLR), the committee requested additional information. The amendment returned before the committee as a substitute amendment for their consideration on August 25, 2026, at which meeting the ZLR set a public hearing on the substitute amendment for September 22, 2026.

As an amendment to Chapter 10, towns have the option to review and act on the amendment. While town action is not required, if it is taken, it must be submitted within 30 days of the County public hearing to be counted. Any town action on OA-006 is due by October 22, 2026. 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 private burial sites and burials are not a cemetery use.
- Indicate that private burials are permitted by right on all lots 5 acres or larger
- Establish that a private burial site requires a plat of survey be recorded and filed with Dane County Planning and Development.

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.

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. This language would allow private burial in any district but is further regulated under section 10.103 Special requirements for particular uses. Under the proposed amendment private burial sites would be permitted on lots 5 or more acres. The boundaries of burial sites would be required to be surveyed and recorded with the Register of Deeds and filed with Dane County Planning and Development. Private burial site use would be required to comply with all local, state and federal laws and regulations governing the disposition and burial of human remains.

IV. Considerations

If approved, this amendment would not change or limit a property owner from establishing a cemetery by right or by conditional use permit if they do not meet the criteria of a private burial site, if a property is located within a zoning district that permits such use.

III. Timeline for town action

Town action on the proposed ordinance amendment must be provided to the County within 30 days of the County public hearing on the amendment. While it is good practice for towns to take action on text amendments to Chapter 10, it is not required.

Town officials, please review the enclosed ordinance amendment text and submit a Town Board action report by October 22, 2026. You may complete the enclosed form and submit it by mail or e-mail, or you may utilize the online Town Action Reporting Tool on <https://accessdane.danecounty.gov/>. The online reporting tool option will be available following the September 22, 2026, public hearing.

Enclosures:

2026 OA-006 Public Notice

2026 OA-006 Sub 1 Ordinance Text

Town Board Action form

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.

**NOTICE OF PUBLIC HEARING FOR ORDINANCE AMENDMENT 2026 OA-006 BY THE DANE
COUNTY ZONING AND LAND REGULATION COMMITTEE**

Notice is hereby given that the Dane County Zoning and Land Regulation Committee will hold a public hearing on the items listed below on Tuesday, September 22, 2026, at 6:30pm in Room 354 of the City-County Building, 210 Martin Luther King Jr. Blvd., Madison, WI. This will be a hybrid meeting. Members of the public may attend either in person at the location listed above, OR virtually by phone or computer. To attend by computer, follow this link: <https://zoom.us/j/93839489130> To attend by phone, dial: 1-888-788-0099 and enter Webinar ID: 938 3948 9130. All persons wishing to speak on an agenda item must pre-register for the meeting at least 30 minutes in advance of the start of the meeting. To register, please follow this link: https://zoom.us/webinar/register/WN_UTz8vy74Qbu3eUr5hbG-hw or email plandev@danecounty.gov. Any written testimony must be submitted within one week prior to the public hearing (September 15, 2026) by emailing it to plandev@danecounty.gov.

1. 2026 OA-006. AMENDING CHAPTER 10 OF THE DANE COUNTY CODE OF ORDINANCES, REVISING THE DEFINITION OF CEMETERY

Sub No. 1 to 2026 OA-6

**AMENDING CHAPTER 10 OF THE DANE COUNTY CODE OF ORDINANCES,
REVISING THE DEFINITION OF CEMETERY**

The County Board of Supervisors of the County of Dane does ordain as follows:

ARTICLE 1. Unless otherwise expressly stated herein, all references to section and chapter numbers are to those of the Dane County Code of Ordinances.

ARTICLE 2. Section 10.004(37) is amended to read as follows:

(37) Cemetery.

(a) Any land, that is used, or intended to be used, for the burial of human remains.

(b) Examples of cemeteries include, but are not limited to, cemeteries, mausoleums, columbariums and burial chapels.

(c) For purposes of this Chapter, the term cemetery does not include a private burial site.

ARTICLE 3. Section 10.103(16n) is created to read as follows:

10.103 SPECIAL REQUIREMENTS FOR PARTICULAR USES.

(16n) Private Burial Sites.

(a) Private burial sites are a permitted use on zoning lots of 5 contiguous acres or more.

(b) The boundaries of a private burial site shall be surveyed and recorded with the Dane County Register of Deeds, with a copy of the recorded document filed with the Dane County Planning & Development Department.

(c) Private burial sites shall comply with all applicable local, state and federal laws and regulations governing the disposition and burial of human remains.

[EXPLANATION: This amendment regulates private burial sites excludes private burial sites from the definition of cemetery.]