

ORDINANCE #07-31-23-01

**AN ORDINANCE ASSUMING JURISDICTION AND CONTROL OF CERTAIN
PIONEER CEMETERIES AND/OR PRIVATE BURIAL SITES LOCATED IN
MUSCATINE COUNTY, IOWA**

BE IT ORDAINED AND ENACTED by the Supervisors of Muscatine County, Iowa:

Section 1. Purpose. The purpose of this Ordinance is to allow Muscatine County, Iowa to assume jurisdiction and control over any Pioneer Cemetery and/or Private Burial Sites which are otherwise excluded from the definition of a “Cemetery” under Iowa Code and then as is specifically allowed by Sections 331.325, 523I.103 and/or 523I.316 of the 2022 Code of Iowa. The passage of this Ordinance is required by Iowa law to oversee, maintain and the regulate access to these cemeteries. For purposes of clarification, Muscatine County has specifically determined that a “Cemetery Commission” is not to be established under the terms of this Ordinance.

Section 2. Definitions. The definition of the terms used in this Ordinance are defined under Iowa law, including Section 523I.1 of the 2022 Code of Iowa, but incorporated in part herein as follows:

1. “Burial Site” – means any area, except a Cemetery, that is used to inter or scatter remains, including those restricted to family members or to a narrow segment of the public (pursuant to 523I.102 (2)).
2. “Cemetery” – means any area that is or was open to use by the public in general or any segment thereof and is used or is intended to be used to inter or scatter remains, but excludes the following:
 - a. A private burial site where use is restricted to members of a family, if the interment rights are conveyed without a monetary payment, fee, charge, or other valuable form of compensation or consideration.
 - b. A private burial site where use is restricted to a narrow segment of the public, if the interment rights are conveyed without a monetary payment, fee, charge, or other valuable form of compensation or consideration.
 - c. A pioneer cemetery. (Pursuant to 523I.102 (6) (a thru c)).
3. “Governmental Subdivision” – means a county, city, school district or combination thereof (pursuant to 8A.101).
4. “Pioneer Cemetery” - means a cemetery where there were twelve (12) or fewer burials in the preceding fifty (50) years (pursuant to 523I.102 (39)).
5. “Relative” - means a great-grandparent, grandparent, father, mother, spouse, child, brother, sister, nephew, niece, uncle, aunt, first cousin, second cousin, third cousin, or grandchild connected to a person by either blood or affinity (pursuant to 523I.102 (41)).

Section 3. Pioneer Cemeteries and/or Private Burial Sites. The following list of Pioneer Cemeteries or Private Burial Sites which are currently identified and are specifically included within the preview of this Ordinance:

- Bersie Family Cemetery – Sec’s 23 & 24 24-77N-1E
- Catholic Cemetery - Old St. Mary’s Cemetery – Sec. 27-77N-2W (omit any portion in Muscatine City limits);
- Dodge Cemetery - Sec. 17-77N-1E;
- Kaufmann Cemetery - Sec. 3-78N-2W
(1057 Ocean Ave., Moscow, Iowa);
- Kisor-Eisele Cemetery – 2570 Burlington Road;
- Palmray Cemetery – Sec. 27-&77N-1W;
- Patterson Cemetery – Pleasant Prairie Road;
- Schmeltzer Cemetery – Sec. 29-76-4W;
- Wesson Cemetery – Sec. 23-77N-4W;
- Wirz Cemetery – Sec. 6-77N-1E;
- Unnamed Private Burial Site – Parcel #0110200001 – Section 10-78-4W – NW of the NE Quarter;
- Edgington Cemetery;
- Unknown/unnamed cemetery near 160th Street, just east of Atwood Avenue (west of Nichols, Iowa); and
- Any other cemeteries that qualify under Iowa law that are not currently known or may become known in the future.

Section 4. Funding. As provided and limited by Section 331.325, Subsection (2) and (3) (a), of the 2022 Code of Iowa, for purposes of funding under this Ordinance, all monies shall be paid from the County General Fund. The County is not currently authorized under Iowa law to certify a tax levy, pursuant to Iowa Code Sections 359.30 or 359.33 and as is otherwise allowed for Township Trustees who oversee other dedicated cemeteries. Notwithstanding the foregoing relating to funding, the County is authorized to expend public funds, in any manner authorized by law, in connection with a Pioneer Cemetery and/or Private Burial Site. Also, under Iowa Code 359.30, the County may accept gifts, devise, bequest, money or property for the purposes of maintaining cemeteries. All such gifts, devises or bequests shall be effectual only when accepted by resolution of the Board of Supervisors and then managed and accounted for by the County Administration Office.

Section 5. Preservation and Protection. The County is obligated under Iowa law to preserve and protect the Pioneer Cemeteries and/or Private Burial Sites as is necessary to restore or maintain the physical integrity as a cemetery or private burial site and may delegate these duties to others as follows:

1. Pursuant to Iowa Code 523I.316 (3), by entering into a written agreement to delegate the preservation and protection with one (1) of the following:
 - a. With the owner of the property on which the Pioneer cemetery is located;

- b. With a public organization interested in historical preservation, including the Township Trustees of the township in which the Pioneer Cemetery and/or Private Burial Site are located; or
 - c. With a private organization interested in historical preservation.
 - d. **NOTE:** As it relates to the foregoing options and priority, a public or private organization shall not preserve and maintain the Pioneer Cemetery or Private Burial site, unless the owner of the property upon which the Pioneer Cemetery or private Burial Site is located has been afforded the opportunity to preserve and protect the location and has declined to do so.
2. The County shall have all powers and duties relating to a Pioneer Cemetery and/or private Burial Site which may otherwise be exercised by Township Trustees under Iowa Code 359.37 as follows:
 - a. To enclose, improve, and adorn the ground of such cemetery.
 - b. To construct avenues in the cemetery.
 - c. To erect proper buildings for the use of the cemetery, if any.
 - d. To prescribe rules for the improving or adorning the lots in the cemetery or for the erection of monuments or other memorials of the dead upon the lots.
 - e. To prohibit any use, division, improvement, or adornment of a lot which the trustees, directors, or officers may deem improper.
3. To provide necessary clarity to the public and relatives of the persons buried in these cemeteries, the County advises the public that under the terms of this Ordinance the County will not be paying for or using taxpayer monies for the following:
 - a. Grave marker/headstone repairs or replacements.
 - b. Roadways or other improvements to gain access to cemeteries across private property;
 - c. Platting or surveying of cemeteries and/or lots; and
 - d. Selling lots to relatives, but may take donations.
4. The County shall have the authority to establish additional rules and regulations governing its preservation, protection and oversight efforts as it shall deem necessary.
5. The County Administration Office shall submit a proposed budget, including the amount of available funds and proposed expenditures, to the Muscatine County Board of Supervisors in conjunction with the County Budgetary process each year.
6. The County shall receive no compensation for their services, but may receive gifts and/or be reimbursed for necessary expenses incurred in the performance of their duties.

Section 6. Notice Obligations. As required by Iowa law, the County shall provide the following “notices” to other governmental entities/agencies and/or others, including

property owners, as required under Iowa law:

1. The owner of the property upon which the Pioneer Cemetery and/or private Burial Site are located of both the existence and location of the burial site (Iowa Code 523I.316 (1)), including an explanation of the provisions of Chapter 523I, including Iowa Code 523I.315 (3).
2. The owner of the property that the County will engage a public or private organization to preserve and maintain the burial site at least fourteen (14) days before the meeting at which the proposed agreement will be authorized and the following: The notice required under Section 523I.316 (3), shall include the location of the cemetery or burial site and a copy of the proposed agreement, and explain that the property owner is required to permit members of the public or private organization reasonable ingress and egress for the purposes of preserving and protecting the cemetery or burial site pursuant to the proposed agreement. The notice shall also include the date, time, and place of the meeting and a statement that the property owner has a right to attend the meeting and to comment regarding the proposed agreement.
3. In the event that there is reason to believe that the internment may have occurred more than 150 years ago, to the State Archaeologist (Iowa Code 523I.316 (1)).

Section 7. Property Owner's Liability: A property owner who is required to permit members of a public or private organization reasonable ingress and egress for the purpose of preserving or protecting a cemetery or burial site on that owner's property and who acts in good faith and in a reasonable manner pursuant to this subsection is not liable for any personal injury or property damage that occurs in connection with the preservation or protection of the cemetery or burial site or access to the cemetery or burial site. (523I.316 (e)).

Section 8. County's Liability. Subject to Chapter 670, a governmental subdivision that enters into an agreement with a public or private organization pursuant to this subsection is liable for any personal injury or property damage that occurs in connection with the preservation or protection of the cemetery or burial site or access to the cemetery or burial site by the governmental subdivision or the public or private organization. For the purposes of this paragraph, "liable" means liability for every civil wrong which results in wrongful death or injury to a person or injury to property or injury to personal or property rights and includes, but is not restricted to actions based upon negligence; error or omission; nuisance; breach of duty, whether statutory or other duty; or denial or impairment of any right under any constitutional provision, statute, or rule of law (523I.316 (d)).

Section 9. Reasonable Ingress and Egress. For the purposes of this Ordinance, reasonable ingress and egress to a cemetery or burial site shall include the following:

1. A member of a public or private organization that has entered into a written agreement with the governmental subdivision who desires to visit such a cemetery or burial site shall give the property owner at least ten (10) days' written notice of the intended visit.

2. If the property owner cannot provide reasonable access to the cemetery or burial site on the desired date, the property owner shall provide reasonable alternative dates when the property owner can provide access to the member.
3. A property owner is not required to make any improvements to that person's property to satisfy the requirement to provide reasonable access to a cemetery or burial site pursuant to this subsection.
4. The owner of the property may make reasonable inquiry to assure that the person requesting entrance is an actual relative as defined herein.

Section 10. Confiscation and Return of Memorials. A law enforcement officer having reason to believe that a memorial or memorialization is in the possession of a person without authorization or right to possess the memorial or memorialization may take possession of the memorial or memorialization from that person and turn it over to the officer's law enforcement agency. If a law enforcement agency determines that a memorial or memorialization the agency has taken possession of rightfully belongs on an interment space, the agency shall return the memorial or memorialization to the interment space, or make arrangements with the person having jurisdiction over the interment space for its return.

Section 11. Burial Sites Located on Other Private Property. If a person notifies a governmental subdivision that a burial site of the person's relative is located on property owned by another person within the jurisdiction of the governmental subdivision, the governmental subdivision shall notify the property owner of the location of the burial site and that the property owner is required to permit the person reasonable ingress and egress for the purposes of visiting the burial site of the person's relative and for purposes of this Ordinance as is outlined in Section 9.

Section 12. Discovery of Human Remains. Any person discovering human remains shall notify the county or state medical examiner or a city, county, or state law enforcement agency as soon as is reasonably possible unless the person knows or has good reason to believe that such notice has already been given or the discovery occurs in a cemetery. If there is reason to believe that interment may have occurred more than one hundred fifty years earlier, the governmental subdivision notified shall also notify the state archaeologist. A person who does not provide notice required pursuant to this subsection commits a serious misdemeanor.

Section 13. Adverse Possession. A Pioneer Cemetery and/or Private Burial Site are exempt from seizure, appropriation, or acquisition of title under any claim of adverse possession, unless it is shown that all remains in the cemetery or pioneer cemetery have been disinterred and removed to another location.

Section 14. Disturbance of Internment Spaces – Penalty. A person who knowingly and without authorization damages, defaces, destroys, or otherwise disturbs an interment space commits criminal mischief in the third degree under section 716.5. Criminal mischief in the third degree is an aggravated misdemeanor.

Section 15. Savings Clause. Should any part or portion of this Ordinance be held or determined to be invalid, the remaining part of portion shall be severable and shall continue to be in full force and effect.

Section 16. Conflicts in Ordinances. All other Ordinances or parts of Ordinances conflicting with the provisions of this Ordinance are hereby repealed.

Section 17. Public Notification. In an effort to assure public awareness of this Ordinance, the Muscatine County Administration Office shall publish a complete copy of the final Ordinance upon passage, so as to assure that the public and property owners are informed.

Section 18. Ordinance Enforcement. Violations of this Ordinance may be pursued in accordance with Title 1: Administration, Chapter V – Muscatine County Enforcement Ordinance and Iowa Code 331.307 as a County Infraction.

Section 19. Effective Date. This ordinance shall take effect and be in full force and effect after its passage and publication as required by law.

PASSED, APPROVED AND ADOPTED this 31st day of July, 2023.

ATTEST:

Tibe Vander Linden, County Auditor

Scott Sauer, Chairperson
Muscatine County Board of Supervisors