

# **TITLE XV: LAND USAGE**

## **Chapter 163**

### **Abandoned Cemetery and Burial Ground Protection Ordinance**

**CHAPTER 163: ABANDONED CEMETERY AND BURIAL GROUND  
PROTECTION ORDINANCE**

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**§ 163.01 PURPOSE AND INTENT**

- (A) The care accorded the remains of deceased persons reflect respect and regard for human dignity as well as cultural, spiritual, and religious values. The Board of Commissioners of Pike County declares that human remains and burial objects are not property to be owned by the person or entity which owns the land or water where the human remains and burial objects are interred or discovered, but human remains and burial objects are a part of the finite, irreplaceable, and nonrenewable cultural heritage of the people of Georgia and Pike County which should be protected.
- (B) It is the intent of the Board of Commissioners of Pike County that the provisions of this section be construed to require respectful treatment of human remains in accord with the equal and innate dignity of every human being and consistent with the identifiable ethnic, cultural, and religious affiliation of the deceased individual as indicated by the method of burial or other historical evidence or reliable information.

(Ord. Passed 04-08-09)

**§ 163.02 DEFINITIONS**

As used in this section, the term:

- (A) 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.

(B) ARCHAEOLOGIST.

Any person who is:

- (1) A member of or person meeting the criteria for membership in the Register of Professional Archaeologists and/or the Georgia Council of Professional Archaeologists and can demonstrate professional experience in the excavation and interpretation of human graves; or
- (2) Employed on July 1, 1991, by the state or by any county or municipal governing authority as an archaeologist.

(C) BURIAL GROUND.

An area dedicated to and used for interment of human remains. The term shall include privately owned burial plots, individually and collectively, once human remains have been buried therein. The fact that the area was used for burial purposes shall be evidence that it was set aside for burial purposes.

(D) BURIAL OBJECT.

An 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 term also means any inscribed or uninscribed marker, coping, curbing, enclosure, fencing, pavement, shelter, wall, stoneware, pottery, or other grave object erected or deposited incident to or subsequent to interment.

(E) CEMETERY OR CEMETERIES.

Any land or structure in Pike County dedicated to and used, or intended to be used, for interment of human remains. It may be either a burial park for earth interments or a mausoleum for vault or crypt interments or a combination of 1 or more thereof.

(F) DESCENDANT.

A person or group of persons related to a deceased human by blood or adoption in accordance with Title 19 of the Official Code of Georgia.

(G) GENEALOGIST.

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

(H) HUMAN REMAINS.

The bodies of deceased human beings in any state of decomposition, including properly identified, buried, cremated remains.

(I) 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 may also include the cleaning, maintenance, and upkeep of the site so as to aid in its preservation and protection.

(Ord. Passed 04-08-09)

**§ 163.03 COUNTYWIDE LOCATION OF GRAVESITES AND BURIAL GROUNDS**

The official histories of Pike County, as well as the registers of established churches and municipalities, ably document most burial places within the borders of Pike County, but they are by no means exhaustive. To better locate all or nearly all gravesites and burial grounds within Pike County, the Pike County Historical Society will be asked to establish a volunteer committee of Pike County citizens to determine field locations of additional gravesite and burial grounds not properly documented within the borders of Pike County. The volunteer committee will

report findings of additional gravesites and burial grounds to the Pike County Planning and Development Department. The Pike County Planning and Development Department shall prepare a database of all known and unknown cemeteries, grave sites, and burial grounds, and make this database available on a specially prepared County map. All known or unknown abandoned gravesites and burial grounds shall be respected in regards to the standards set forth in this ordinance. Abandoned cemeteries and burial grounds shall be identified and located on any plats and development plans submitted to Pike County.  
(Ord. Passed 04-08-09)

**§ 163.04 PERMIT REQUIRED**

No known cemetery, burial ground, human remains, or burial object shall be knowingly disturbed or disinterred by the owner or occupier of the land on which the cemetery or burial ground is located for the purposes of developing or changing the use of any part of such land unless a permit is first obtained from the Board of Commissioners of Pike County.  
(Ord. Passed 04-08-09)

**§ 163.05 PERMIT APPLICATION**

Each application for a permit under this section shall include at minimum, the information required by Section 36-72-5 of the Official Code of Georgia. Such applications shall be submitted on a form required by the Planning and Development Department of Pike County, and shall contain appropriate attachments setting forth the information required by the above referenced Code section.  
(Ord. Passed 04-08-09)

**§ 163.06 IDENTIFICATION OF DESCENDANTS FOR DISINTERMENT CASES**

The applicant (owner and developer) shall implement a plan for identifying and locating the descendants of the person(s) in the cemetery sought to be disinterred for development, no later than the date the application is submitted to the Planning and Development Department. (The full extents of the cemetery or burial ground should be ascertained in a report by a qualified archaeologist prior to the implementation of a plan to notify descendants.) The applicant's plan for identifying and notifying the descendants of the deceased persons shall be reviewed by the Director of Planning and Development or official designee, and it may be required as a condition for issuing a permit that the applicant implement additional reasonable attempts to identify and locate descendants. Notice to possible descendants shall include information on how to contact the Board of Commissioners of Pike County and a summary of the rights of descendants under this section and under Sections 36-72-1 through 36-72-16 of the Official Code of Georgia. As a part of this process, the Board of Commissioners of Pike County shall promptly inform any descendants who indicate an interest in the disposition of the human remains and burial objects regarding any proposals for mitigation, the terms of any permit issued, the time and place of any scheduled public hearings, and appeal procedures and events.  
(Ord. Passed 04-08-09)

### **§ 163.07 PUBLIC HEARING AND DECISION**

- (A) Within 15 days after Pike County is satisfied that all reasonable effort has been made to notify descendants, as provided in Section 163.06, 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 in Section 163.05, notice of the public hearing shall be advertised in the legal organ of Pike County once a week for the 2 consecutive weeks immediately preceding the week in which any such hearing is held.
- (B) Within 30 days after the conclusion of the public hearing, the Board of Commissioners shall notify the applicant in writing of its decision. The Board of Commissioners shall have the authority to deny the application with written reasons, issue a permit adopting the application in whole or in part, or 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.

(Ord. Passed 04-08-09)

### **§ 163.08 ISSUES CONSIDERED IN DECISION ON APPLICATION**

The Board of Commissioners shall consider the following in making its determination:

- (A) The presumption in favor of leaving the cemetery or burial ground undisturbed;
- (B) The concerns and comments of any descendants of those buried in the burial ground or cemetery and any other interested parties;
- (C) The economic and other costs of mitigations;
- (D) The adequacy of the applicant's plans for disinterment and proper disposition of any human remains or burial objects;
- (E) The balancing of the applicant's interest in disinterment with the public's and any descendant's interest in the value of the undisturbed cultural and natural environment; and
- (F) Any other compelling factors which it deems relevant.

(Ord. Passed 04-08-09)

### **§ 163.09 APPLICATION FEE**

An application fee shall be submitted by each applicant at the time of application in the amount of \$500.00 to cover the cost of processing and reviewing the application. Should additional costs be incurred by Pike County in the form of the hiring of an independent archaeologist(s) and/or independent surveyor(s) to assist in making recommendations regarding the applicant's plan, additional fees will be imposed upon the applicant to cover such costs. All application fees incurred under the terms hereof must be paid in full by the applicant prior to the final decision to be rendered upon the application by the Board of Commissioners.

(Ord. Passed 04-08-09)

### **§ 163.10 APPEAL OF DECISION**

Should any applicant or descendant be dissatisfied with the decision of the Board of Commissioners, he or she, within 30 days of such decision, may file an appeal in the Superior Court of Pike County in addition to the superior courts enumerated in Section 50-13-19 of the Official Code of Georgia.

(Ord. Passed 04-08-09)

**§ 163.11 DEVELOPMENT ACTIVITIES PENDING APPEAL**

Until the expiration of the time for appeal as set forth in Section 163.10, the applicant shall not begin or resume activities which comply with the permit issued by the governing authority. 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 order of the reviewing court for good cause shown.

(Ord. Passed 04-08-09)

**§ 163.12 COMPLIANCE INSPECTIONS**

Pike County shall inspect as necessary to determine whether the applicant has complied with the provisions of this section requiring the cessation or limitation of any activity to determine whether the applicant has complied with the terms of the permit as issued or as modified by the Superior Court or reviewing court.

(Ord. Passed 04-08-09)

**§ 163.13 DISINTERMENT AND DISPOSITION OF REMAINS**

Any disinterment and disposition of human remains or burial objects permitted under this section shall be supervised, monitored, or carried out by the applicant's archaeologist and shall be done at the expense of the person or entity to whom the permit issued. The disinterment and disposition of remains shall also be monitored by a member of the Pike County Health Department and the Pike County Sheriff's Department. Any established legal procedures for such events at the county and state level shall be strictly observed.

(Ord. Passed 04-08-09)

**§ 163.14 PENALTIES**

This section is patterned after Section 36-72-16 of the Official Code of Georgia. The requirements and procedures for application contained in this section are mandated by that chapter and title. As such, a violation of this section will constitute a violation of that chapter and title. The penalties for a violation of that chapter and title are set forth in Section 36-72-16 of that chapter and title of the Official Code of Georgia.

(Ord. Passed 04-08-09)

**§ 163.15 STANDARDS FOR CEMETERIES AND BURIAL GROUNDS TO REMAIN**

- (A) Sites shall be designed to preserve and protect any cemetery or burial ground within their legal borders. Prior to development, where a site contains, or borders, a cemetery or grave site, the developer, based on the archaeologist's report and field delineations, shall clearly delineate the area on all site plans and construction drawings. In addition, the delineated cemetery, fence, and any associated easements, shall be shown on the preliminary and final plats as a nonconforming lot and common area.
- (B) Prior to land disturbance, the boundaries of the preserved cemetery or burial ground shall be delineated by a qualified archaeologist. The cemetery boundary shall be protected during construction by a 4 foot orange fencing installed prior to the commencement of any land disturbing activity. After completion of site work, the delineated cemetery shall be surrounded by a 4 foot high permanent fence, with gate, made of black or green clad chain

link. Wrought iron fences are also allowed. Preserved cemeteries shall not be included in any portion of a lot other than those areas dedicated as common areas or open space. Preserved cemeteries that lie within the legal boundaries of a subdivision under the jurisdiction of a homeowner's association will be maintained in an orderly fashion by the homeowner's association. In terms of aesthetics and accessibility, any homeowner's association that allows neglect or vandalism to a preserved cemetery within their legal jurisdiction may be subject to the same penalties described in Section 36-72-16 of the Official Code of Georgia. A 15-foot wide access easement shall be provided from a public road or private road, whichever is closest, to the preserved cemetery, and made passable by normal passenger vehicles, prior to final plat approval. Access to the cemetery shall be improved to allow access by visitors' vehicles, per Pike County Department of Public Works standards. Significant trees or vegetation that are identified by the archaeologist as features of the cemetery shall be preserved and protected. Trees shall have their entire critical root zone protected. If significant trees or vegetation are located outside of the no-disturbance area and fence, they shall be protected with 4 foot high orange fencing during construction.

(Ord. Passed 04-08-09)

#### **§ 163.16 PREEXISTING CEMETERIES**

- (A) Any reuse of an existing abandoned cemetery or expansion of a portion of a cemetery, which was approved, or was in the process of gaining approval, by Pike County Board of Commissioners on the date of adoption of this ordinance shall be a nonconforming use and shall be subject to the specific provisions of this section as a conditional use.
- (B) In addition to the minimum conditions set forth above, the Board of Commissioners may impose further conditions hereunder to protect the public interest, to assure the continued beneficial use and enjoyment of nearby properties, and to prevent any undue detriment to nearby properties.

(Ord. Passed 04-08-09)

#### **§ 163.17 AMERICAN INDIAN HUMAN REMAINS AND BURIAL OBJECTS**

Per Georgia Code ann. 44-12-260 et. seq., American Indian remains and burial objects shall be protected by the same processes and standards established in this Chapter for all other cemeteries and burial grounds within the legal boundaries of Pike County.

(Ord. Passed 04-08-09)

#### **§ 163.18 EFFECTIVE DATE**

This ordinance shall become effective upon the second reading of the proposed ordinance and upon the affirmative vote of at least 3 commissioners.

(Ord. Passed 04-08-09)