

# HERITAGE BULLETIN

Tips, Ideas & More to Help Preserve Oregon's Heritage

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STATE LAWS PERTAINING TO HISTORIC CEMETERIES

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## A Question and Answer Sheet

### 1. What is a "Cemetery"?

A cemetery is any one, or a combination of more than one, of the following, in a place used or intended to be used, and dedicated, for cemetery purposes: (a) a burial park, for earth interments; (b) a mausoleum, for crypt interments; or (c) a columbarium, for permanent cinerary interments (cremations). ORS 692.010 <http://www.leg.state.or.us/ors/692.html>

### 2. What is a "Historic Cemetery"?

A "Historic Cemetery" means any burial place that contains the remains of one or more persons who died before February 14, 1909. Historic Cemeteries must be listed either with the State Mortuary and Cemetery Board, if operating, or with the Oregon Commission on Historic Cemeteries if not operating. Operating Cemeteries can also be Historic Cemeteries. ORS 97.772 and 97.782 <http://www.leg.state.or.us/ors/097.html>

### 3. What are the benefits for historic cemeteries ?

A historic cemetery may not be discontinued, declared abandoned or have remains removed from the burial ground or cemetery without prior notice to and comment by the OCHC. ORS 97.450 <http://www.leg.state.or.us/ors/097.html>

- The OCHC must be notified and allowed to give comment on removal of dedication of historic cemetery property. ORS 97.440 <http://www.leg.state.or.us/ors/097.html>
- Historic cemeteries listed with OCHC or with the State Mortuary and Cemetery Board are not required to register under the Charitable Trust and Corporation Act. ORS 128.640 <http://www.leg.state.or.us/ors/128.html>
- Cemeteries may be exempt from Corporation Excise Tax based on the description in Chapter 317. ORS 317.080 <http://www.leg.state.or.us/ors/317.html>
- Human burials that are over 75 years of age are considered archaeological sites and are protected under state law. ORS 358.920 <http://www.leg.state.or.us/ors/358.html> The removal of any historic burials needs to be coordinated with



a professional archaeologist who has obtained a state archaeological permit. ORS 390.235 <http://www.leg.state.or.us/ors/390.html> & OAR 736-051-0080 to 0090 [http://arcweb.sos.state.or.us/rules/OARS\\_700/OAR\\_736/736\\_051.html](http://arcweb.sos.state.or.us/rules/OARS_700/OAR_736/736_051.html)

#### **4. Are there grants to help with cemetery preservation or cultural education?**

Heritage Programs of Oregon Parks and Recreation Department offer several grants targeted for historic preservation. [www.oregonheritage.org](http://www.oregonheritage.org). The Oregon Cultural Trust has annual grants available to fund specific arts, heritage and humanities programs and for cultural development. <http://www.culturaltrust.org/home/index.php>.

#### **5. What is the difference between a platted cemetery and a dedicated cemetery?**

A platted cemetery is mapped with borders, plots, structures, etc. identified. A dedicated cemetery has a written letter of declaration and map or plat filed for record in the office of the recorder of the county as a property for solely cemetery purposes. ORS 97.310-97.420 <http://www.leg.state.or.us/ors/097.html>

#### **6. How can dedication be removed?**

To remove dedication of a cemetery property or a portion of cemetery property is an extensive process that requires public notification and response as well as the same for the Oregon Commission on Historic Cemeteries. For removal of dedication, all markers and remains must be removed. ORS 97.440 <http://www.leg.state.or.us/ors/097.html>

#### **7. Can cemeteries be discontinued?**

Cemeteries may be discontinued only with notification of next of kin and removal of interments and markers to another cemetery. If it is a historic cemetery the Oregon Commission on Historic Cemeteries must be notified and allowed to respond. ORS 97.450 <http://www.leg.state.or.us/ors/097.html>

#### **8. May police patrol cemeteries even on private property?**

All cemeteries can be accessed by police, even on private property. ORS 97.430 <http://www.leg.state.or.us/ors/097.html>

#### **9. What about hunting in a cemetery?**

Cemeteries are closed to hunting and trapping. ORS 635-50-0210 & ORS 166.645 <http://www.leg.state.or.us/ors/166.html>, 498.120 & 498.158 <http://www.leg.state.or.us/ors/498.html>

#### **10. Are there fines for vandalism of memorials in a historic cemetery?**

Judges may consider ordering the defendant to pay restitution by infraction fines when a person commits the crime of abuse of a memorial to the dead in a historic cemetery. ORS 166.076 <http://www.leg.state.or.us/ors/166.html>

*A dedicated cemetery has more protection in the case of moving the cemetery than a cemetery that is only platted.*

**11. Can I get access through and on private property to a historic cemetery?**

Non-motorized access to historic cemetery is allowed through and on private property at reasonable times to be designated by the property owner. The purpose of the access may be for visitation, maintenance or research purposes by descendants of those persons buried in the historic cemetery, and persons interested in historical research. ORS 376.197 <http://www.leg.state.or.us/ors/367.html>

**12. Is there an operating fee for cemeteries?**

All operating cemeteries must be listed with the State Mortuary and Cemetery Board. Those performing 10 or fewer interments annually pay a one time fee for Certificate of Authority. ORS 692.275 <http://www.leg.state.or.us/ors/692.html>

**13. What are the rules for nonprofit corporations owning cemeteries?**

Nonprofit corporations organized and existing solely for the purposes of either owning or operating a cemetery have special rules under ORS Chapter 65 – Non-profit Corporations. <http://www.leg.state.or.us/ors/065.html>

**14. Are there laws about partitioning cemetery land from a farm use zone?**

A cemetery meeting conditions may be partitioned from land that has received special assessment as exclusive farm use zone farmland, while the parcel continues in special assessment. Conditions include: use as a cemetery between 1810 and 1950; contains fewer than 50 markers; is less than one acre in size; and was issued a patent before 1900. ORS 308A.125 <http://www.leg.state.or.us/ors/308a.html> Cemeteries in conjunction with churches may be established in any area zoned for exclusive farm use. ORS 215.283 <http://www.leg.state.or.us/ors/215.html>

**15. Is property used as a cemetery taxable?**

Most property used exclusively as a cemetery is not taxable. Any property exclusively occupied and used as a family burial ground, owned by an Oregon corporation for the purpose of owning and operating and other exemptions, including nonprofit status may apply. Any organization seeking exemption must apply. ORS 307.140-307.162 <http://www.leg.state.or.us/ors/307.html>

**16. What are the rights of cities to purchase land with an existing cemetery or to establish a cemetery?**

Cities may own, purchase and operate cemeteries. Any municipal corporation may acquire and remove cemeteries to another site with due process. Cities may acquire abandoned cemeteries which means any cemetery in which no remains of deceased persons have been interred for a period of five years ORS 226.410-226.630 <http://www.leg.state.or.us/ors/226.html>.

**17. Are there laws for Cemetery Maintenance Districts?**

Cemetery Maintenance Districts may be formed in the manner provided by ORS 265. ORS 265 <http://www.leg.state.or.us/ors/265.html>, ORS 451. 010-451.020, 451.573-451.577 <http://www.leg.state.or.us/ors/451.html>, and ORS 198.115, 198.190, 198.220, 198.320, 198.340, 198.775 <http://www.leg.state.or.us/ors/198.html>.

*Many other laws apply to operating cemeteries.*

*Contact the Oregon Mortuary and Cemetery Board to find out more.*

*[www.oregon.gov/MortCem](http://www.oregon.gov/MortCem)*

**18. Are there laws pertaining to archaeological sites?**

- Archaeological sites are acknowledged to be a finite, irreplaceable and nonrenewable cultural resource, and are an intrinsic part of the cultural heritage of the people of Oregon. As such, archaeological sites and their contents located on public land are under the stewardship of the people of Oregon to be protected and managed in perpetuity by the state as a public trust. ORS 358.905- 358.961

<http://www.leg.state.or.us/ors/358.html>

- A person may not excavate or alter an archaeological site on public and private lands, make an exploratory excavation on public lands to determine the presence of an archaeological site, or remove from public and private lands any material of an archaeological, historical, prehistoric or anthropological nature without first obtaining a permit issued by the State Parks and Recreation Department. ORS 390.235-390.240

<http://www.leg.state.or.us/ors/390.html>

**19. Can the Department of Transportation acquire cemetery property for right-of-way purposes?**

The Department of Transportation may acquire by purchase, agreement, donation, or by exercise of the power of eminent domain, real property for right-of-way through a cemetery; except if there are graves which would be disturbed by the location and construction of a highway. The department may, through written agreement by the owners of the cemetery, acquire by purchase, agreement, donation or exercise of the power of eminent domain, real property contiguous to the cemetery, and convey such real property to the cemetery association or the owners of the cemetery in exchange for the property sought to be acquired for right-of-way purposes. ORS 366.325 <http://www.leg.state.or.us/ors/366.html>

**20. Does the State support the preservation of historic properties?**

The Legislative Assembly declares that it is in the best interest of the state to maintain, preserve and rehabilitate properties of Oregon historical significance. The State of Oregon has a Preservation Plan in recognition of the Legislative Assembly declaring that the cultural heritage of Oregon is one of the state's most valuable and important assets; that the public has an interest in the preservation and management of all antiquities, historic and prehistoric ruins, sites, structures, objects, districts, buildings and similar places and things for their scientific and historic information and cultural and economic value; and that the neglect, desecration and destruction of cultural sites, structures, places and objects result in an irreplaceable loss to the public. ORS 358.475-358.605 <http://www.leg.state.or.us/ors/358.html>.

**21. I am doing family genealogy. Are cemeteries listed with the local county offices?**

The County Clerk shall maintain a map of all cemeteries within the county with any description, acknowledgment or other writing. ORS 205.190 <http://www.leg.state.or.us/ors/205.html>

*There may be other laws that pertain to your situation. please consult the Oregon State web site, [www.oregon.gov](http://www.oregon.gov) to learn more.*

*Information provided by  
Heritage Programs  
Historic Cemeteries  
Program*