

**AN ORDINANCE TO REGULATE  
ABANDONED CEMETERIES AND BURIAL GROUNDS  
IN NEWTON COUNTY, GEORGIA; TO REPEAL CONFLICTING  
PROVISIONS; TO PROVIDE FOR AN EFFECTIVE DATE;  
AND FOR OTHER PURPOSES**

**BE IT ORDAINED** by the Board of Commissioners, Newton County, Georgia, and by the authority of the same that Part IV of Division II of the Code of Newton County, Georgia, 2002, is amended by the following to be designated as Chapter 41:

**CHAPTER 41: ABANDONED CEMETERIES AND BURIAL GROUNDS**

**Section 41-101 Purpose and intent.**

(a) The care accorded the remains of deceased persons reflects respect and regard for human dignity as well as cultural, spiritual, and religious values. The Board of Commissioners of Newton 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 Newton County which should be protected.

(b) It is the intent of the Board of Commissioners of Newton County that the provisions of this article 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.

**Section 41-102 Definitions.**

As used in this article, the term:

*Abandoned cemetery* means 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.

*Archeologist* means any person who is:

(1) A member of or meets the criteria for membership in the Society of Professional Archaeologists and can demonstrate 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 archeologist.

*Burial ground* means 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.

*Burial object* means any 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.

*Cemetery or cemeteries* means any land or structure in Newton 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 one (1) or more thereof.

*Descendant* means 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.

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

*Human remains* means the bodies of deceased human beings in any state of decomposition, including cremated remains.

*Preserve and protect* means 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.

**Section 41-103      Permit required.**

No known cemetery, burial ground, human remains, or burial object shall be knowingly disturbed 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 Newton County.

**Section 41-104      Permit application.**

All persons desiring to obtain a permit under the provisions of this Ordinance shall make an application on the form prescribed by the Newton County Department of Planning and Development. Each application shall include, at minimum, the information required by

O.C.G.A. § 36-72-5. Completed applications shall be submitted to the Department of Planning and Development and shall contain appropriate attachments setting forth the information required by the above-referenced Code section and any other information required by the County.

**Section 41-105 Identification of descendants.**

The applicant shall implement a plan for identifying and locating the descendants of the person(s) in the cemetery sought to be developed no later than the date the application is submitted. The applicant's plan for identifying and notifying the descendants of the deceased persons shall be reviewed, 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 and a summary of the rights of descendants under this Ordinance and under O.C.G.A. §§ 36-72-1 through 36-72-16. As a part of this process, the Board of Commissioners 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.

**Section 41-106 Public hearing and decision.**

(a) Within fifteen (15) days after the county is satisfied that all reasonable effort has been made to notify descendants, 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 41-105, notice of the public hearing shall be advertised in the legal organ of the county once a week for the two (2) consecutive weeks immediately preceding the week in which any such hearing is held.

(b) Within thirty (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 therefor, to issue a permit adopting the application in whole or in part, or to 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, preservation 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.

**Section 41-107 Issues considered in decision on application.**

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

- (1) The presumption in favor of leaving the cemetery or burial ground undisturbed;
- (2) The concerns and comments of any descendants of those buried in the burial ground or cemetery and any other interested parties;

- (3) The economic and other costs of mitigation;
- (4) The adequacy of the applicant's plans for disinterment and proper disposition of any human remains or burial objects;
- (5) 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
- (6) Any other compelling factors which it deems relevant.

**Section 41-108          Application fee.**

An application fee shall be submitted by each applicant at the time of application in the amount of five hundred dollars (\$500.00) to cover the cost of processing and reviewing the application. Should additional costs be incurred by Newton County in the form of the hiring of an independent archeologist(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. In no event, however, will the total application fee exceed two thousand five hundred dollars (\$2,500.00). 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.

**Section 41-109          Appeal of decision.**

Should any applicant or descendant be dissatisfied with the decision of the Board of Commissioners, he or she, within thirty (30) days of such decision, may file an appeal in the Superior Court of Newton County in addition to the superior courts enumerated in O.C.G.A. § 50-13-19.

**Section 41-110          Development activities pending appeal.**

Until the expiration of the time for appeal as set forth in section 41-109, 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.

**Section 41-111          Compliance inspections.**

Newton County shall inspect as necessary to determine whether the applicant has complied with the provisions of this Ordinance 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.

**Section 41-112          Disinterment and disposition of remains.**

Any disinterment and disposition of human remains or burial objects permitted under this article shall be supervised, monitored, or carried out by the applicant's archeologist and shall be done at the expense of the person or entity to whom the permit is issued.

**Section 41-113 Penalties.**

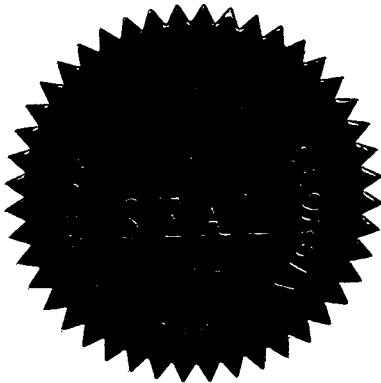
This article is patterned after Chapter 72 of Title 36 of the Official Code of Georgia. The requirements and procedures for application contained in this article are mandated by that chapter and title. As such, a violation of this article will constitute a violation of that chapter and title. The penalties for a violation of that chapter and title are set forth in O.C.G.A. § 36-72-16.

**Section 41-114 Generally.**

- (a) Repeal of conflicting provisions. All ordinances or parts thereof in conflict herewith are hereby repealed.
- (b) This Ordinance shall be in force and take effect on November 16, 2005.

**SO ORDAINED**, this 15th day of November, 2005.

**Newton County Board of Commissioners**



By: *Aaron Varner*  
Aaron Varner, Chairman

Attest: *Jackie Smith*  
Jackie Smith, Clerk