

CLERK'S OFFICE

APPROVED

Date: 10-7-03

Submitted by:

Chair of the Assembly at
the Request of the Mayor

Prepared by:

Planning Department

For reading:

September 23, 2003

Anchorage, Alaska
AO 2003-132

AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE SECTIONS 21.35.020 TO DEFINE CEMETERY, AND SECTION 21.40.020 TO PROHIBIT THE BURIAL OF HUMAN REMAINS, OTHER THAN CREMATED REMAINS, IN ANY LOCATION OTHER THAN A CEMETERY, IN THE PUBLIC LANDS AND INSTITUTIONS (PLI) ZONE DISTRICT.

Section 1. Anchorage Municipal Code section 21.35.020 is hereby amended by adding a definition for "Cemetery" to read as follows (*the remainder of the definitions are not affected and therefore not set out*):

21.35.020

Cemetery means a graveyard, burial ground, or other place of interment, entombment or sepulcher of one or more human bodies or remains.

Section 2. Anchorage Municipal Code subsection 21.40.020 PLI district is hereby amended to read as follows (*the remaining sections are not affected and are therefore not set out*):

21.40.020

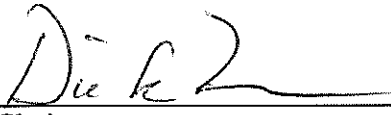
B. Permitted principal uses and structures.

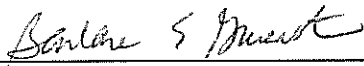
5. Cemeteries, subject to the standards set forth in section 21.50.140. Human remains, other than cremated remains, may not be buried, entombed or interred, above or below ground, except in an approved cemetery.

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2 **Section 3.** This ordinance shall become effective immediately upon its passage and
3 approval by the Assembly.
4

5 PASSED AND APPROVED by the Anchorage Assembly this 7th
6 day of October 2003
7

8
9
10 ATTEST:


Chair


Municipal Clerk

MUNICIPALITY OF ANCHORAGE
Summary of Economic Effects -- General Government

AO Number: 2003-132

Title: Amending AMC 21.35.020 by adding a definition for cemetery, and amending AMC 21.40.020 to allow burials, entombments, and interments of human remains in the Public Lands and Institutions (PLI) district (excepting cremated remains).

Sponsor:

Preparing Agency: Planning Department

Others Impacted:

CHANGES IN EXPENDITURES AND REVENUES:		(In Thousands of Dollars)			
	<u>FY03</u>	<u>FY04</u>	<u>FY05</u>	<u>FY06</u>	
Operating Expenditures					
1000 Personal Services					
2000 Non-Labor					
3900 Contributions					
4000 Debt Service					
TOTAL DIRECT COSTS:	\$ -	\$ -	\$ -	\$ -	
Add: 6000 Charges from Others					
Less: 7000 Charges to Others					
FUNCTION COST:	\$ -	\$ -	\$ -	\$ -	
REVENUES:					
CAPITAL:					
POSITIONS: FT/PT and Temp					

PUBLIC SECTOR ECONOMIC EFFECTS:

Approval of this text amendment should have no significant economic impact upon the public sector.

PRIVATE SECTOR ECONOMIC EFFECTS:

Approval of the text amendment should have no significant economic impact on the private sector.

Prepared by:	<u>Jerry T. Weaver Jr., Zoning Administrator</u>	Telephone: <u>343-7939</u>
Validated by OMB:	<u></u>	Date: <u></u>
Approved by:	<u>(Director, Preparing Agency)</u>	Date: <u></u>
Concurred by:	<u>(Director, Impacted Agency)</u>	Date: <u></u>
Approved by:	<u>(Municipal Manager)</u>	Date: <u></u>



MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

No. AM 742-2003

Meeting Date: September 23, 2003

From: Mayor

Subject: AO 2003-132

Amending AMC 21.35.020 by adding a definition for cemetery and amending AMC 21.40.020 to allow burials, entombments and interments of human remains in the Public Lands and Institutions (PLI) district (excepting cremated remains).

1 Title 21 of the Anchorage Municipal Code does not define cemetery or restrict burial of
2 casketed human remains to cemeteries. Presently, and with the ordinance revisions, cremated
3 remains may be buried, stored or scattered outside of a cemetery.

4 On October 9, 2002 the Anchorage Memorial Park Cemetery Advisory Board voted
5 unanimously to recommend that the law be revised to prohibit the burial of human remains in
6 any location other than an authorized cemetery. Research conducted by the Advisory Board
7 and the Planning Department indicates that most jurisdictions in the United States have land
8 use regulations regarding cemeteries and burials.

9 AMC 21 was reviewed and it was felt that the current code provisions, which allow
10 cemeteries in only the PLI district, are adequate. It was deemed necessary to add cemetery to
11 the definition section, AMC 21.35.020; and to add a reference to Cemeteries, AMC 21.40.020
12 PLI, to make it explicit where human remains may be buried.

13 Approval of the ordinance amendment is recommended.

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17 Prepared by: Jerry T. Weaver Jr., Zoning Administrator, Planning Department
18 Concur: Susan R. Fison, Acting Director, Planning Department
19 Concur: Howard C. Holtan, Acting Executive Director, Office of Planning,
20 Development and Public Works
21 Concur: Denis C. LeBlanc, Municipal Manager
22 Respectfully submitted, Mark Begich, Mayor
23

**MUNICIPALITY OF ANCHORAGE
PLANNING AND ZONING COMMISSION RESOLUTION NO. 2003-037**

A RESOLUTION RECOMMENDING APPROVAL TO THE ASSEMBLY OF AN ORDINANCE AMENDMENT, TO ANCHORAGE MUNICIPAL CODE SECTION 21.35.020 TO DEFINE "CEMETERY" AND SECTION 21.40.020 TO ADD A REFERENCE TO AN APPROVED CEMETERY.

(Case 2003-003)

WHEREAS, the Administration intends to introduce an Ordinance Amending AMC 21.35.020 to define "cemetery" and AMC 21.40.020 to specify that human remains, except cremated remains, must be buried in an approved cemetery, and set it for public hearing, and

WHEREAS, burial of casketed human remains is generally unregulated, and

WHEREAS, notices were published, and a public hearing was held on May 12, 2003; and


NOW, THEREFORE, BE IT RESOLVED, by the Municipal Planning and Zoning Commission that:

A. The Commission makes the following findings of fact:

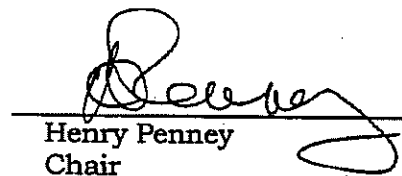
1. The term "cemetery" is not defined in Title 21.
2. The burial, above or below ground, of casketed human remains is generally unregulated. Casketed human remains can be buried in any zone district, without any type of permit and without any standards regarding depth of burial, public notification, etc.
3. All responding review agencies had no comment at the time of this public hearing. No comments from the public have been received.
4. The Planning Department has researched standards around the country regarding burials. Although jurisdictions have varying requirements, human burial is considered a land use issue and burials are examined for consistency with the comprehensive plan and zoning/development issues such as traffic generation, buffering, landscaping, ground stability, water table and identifying and recording grave sites for future land use decisions.
5. The Memorial Park Advisory Commission has researched the issue and found that there are no State or Municipal regulations regarding the burial of casketed human remains outside of designated cemeteries. The Advisory Commission recommends the Planning and Zoning Commission support the ordinance and forward to the Assembly.
6. The Planning and Zoning Commission recommends approval to the Assembly of an Ordinance Amending AMC 21.35.020 to define cemetery and 21.40.020 to modify the PLI district regarding human burial.

Planning and Zoning Commission
Resolution 2003-037
Page 2

PASSED AND APPROVED by the Municipal Planning and Zoning Commission this
12th day of May 2003.



Susan R. Fison
Director



Henry Penney
Chair

(Case 2003-0003)

ab

final
5-12-03

1. **2003-003** Municipality of Anchorage. An Ordinance amending Anchorage Municipal Code Section 21.35.020 to define "cemetery" and prohibit the burial of Human Remains, in any location other than a cemetery.

Staff member AL BARRETT stated this item was before the Commission on January 6, 2003 and was sent back to Staff for additional research, specifically as to how this subject is dealt with in other areas of the country and whether this ordinance is needed locally. Mr. Warden, the cemetery director, prepared a position paper and was present to speak to it. Most of the jurisdictions reviewed by Staff have a cemetery ordinance. It is considered a land use issue. There is a local need for the ordinance as there are no laws governing casketed burial of human remains on private land.

The public hearing was opened.

DON WARDEN, representing the petitioner, indicated he was at least in part representing the Memorial Park Advisory Commission, which promotes this ordinance and forwarding it to the Assembly. A concern is the uncontrolled opportunity for fully casketed human remains to be buried anywhere in the Municipality of Anchorage. He researched several cities of varying sizes and most had restrictions against burying fully casketed human remains in areas other than a designated cemetery. He urged that this ordinance be forwarded to the Assembly.

CHAIR PENNEY asked if this ordinance exempts cremated remains. MR. WARDEN replied that it does exempt cremated remains. Some locales, but not all, that have restrictions on sprinkling of cremated human remains.

The public hearing was closed.

COMMISSIONER COFFEY moved to recommend approval of the ordinance to the Assembly.

COMMISSIONER POULTON seconded.

COMMISSIONER COFFEY felt the Staff memorandum presented adequate arguments for approving this request.

AYE: Jones, Starr, Poulton, Penney, Coffey, Knepper, Klein
NAY: None

PASSED

be resolved. There is a method through an existing contract. MR. POTTER stated that bonding could be achieved through one of a variety of methods. The most straightforward would be for the State to amend the scope of the contract with the contractor. COMMISSIONER COFFEY asked if there is a subdivision agreement associated with this project. MR. POTTER replied in the negative. MS. CHAMBERS stated there is an allowance in the code to use subdivision agreement requirements for landscaping bonds for conditional uses and site plans.

COMMISSIONER KLINKNER asked how condition 5 would operate in the unlikely event there is an appeal of this evening's decision. MS. CHAMBERS recognized this point and suggested it could be contingent on the 15-day period in which an appeal can be filed or a stop work order could be issued. MR. POTTER noted the question is moot because this conditional use approval would not be final until an appeal is resolved.

AYE: Starr, Klinkner, Penney, Brown, Jones, Coffey, Knepper

NAY: None

ABSTAIN: Adams

PASSED

4. 2003-003

Municipality of Anchorage. An Ordinance amending Anchorage Municipal Code Section 21.35.020 to define "cemetery" and prohibit the burial of Human Remains, in any location other than a cemetery.

Staff member AL BARRETT indicated this AO is brought forward by the Anchorage Memorial Park Cemetery Advisory Board. Don Warden, Director of Anchorage Memorial Park had initiated this request. The draft AO is not the version provided from the Legal Department, it is from the Planning Department. He stated that AMC 21.35.020 adds the definition of cemetery and AMC 21.40.020 item B.5 was added by the Legal Department, but had been put in the definitions section and the Department has included it in the conditional use section of the PLI code section, as appropriate.

The public hearing was opened.

BOBBI WELLS stated this AO was brought up at the Birchwood Community Council meeting and the fact that it costs money to be put in the cemetery and there is an annual fee were issues. Another issue was that if this is not passed there will be problems in later years because, as development occurs per Anchorage 2020 for more condensed density, there is danger of digging up human remains that would call for a large investigation. The Community Council suggested toe tags because a person can still be buried

on their own property. She stated if the community was more forward thinking people could be buried in a vertical rather than horizontal position.

The public hearing was closed.

COMMISSIONER BROWN moved for approval of case 2003-003.

COMMISSIONER ADAMS seconded.

COMMISSIONER BROWN was curious what was the rationale for this AO. She asked if other cities have similar requirements for human remains to be buried only in a cemetery. MR. BARRETT responded that Staff did not conduct research into this. COMMISSIONER BROWN stated she would not support this AO without at least understanding whether this is a common practice or something a private cemetery board is requesting. MR. BARRETT did not realize that Mr. Warden's original memorandum was not in the packet, however, he noted that it indicates that research revealed that "most communities across the U.S. have laws prohibiting such burial within city limits. Anchorage has no such law. This definition requires human remains, other than cremated remains, to be buried in a cemetery, as specified in the conditional use standards." COMMISSIONER BROWN asked what would be defined as the city limits, noting that the building permit limits encompass old Anchorage and Eagle River lies outside of that, yet is within the Municipality.

COMMISSIONER KLINKNER thought there was a mistaken impression that cemeteries are a conditional use, but they are a permitted use in the PLI zone. MR. BARRETT indicated this is correct, per standards in that section. COMMISSIONER KLINKNER also wanted to better understand the rationale for this AO, in particular, if it is addressing a public health or land use issue.

COMMISSIONER BROWN withdrew her motion with the concurrence of the second.

COMMISSIONER BROWN moved to return this AO to Staff for further research to find out the practice in other cities, is it a public health issue, what does the State require, and is it a land use question at this time. The matter shall be brought back when that research is finished.

COMMISSIONER ADAMS seconded.

Given the Staff's current workload, COMMISSIONER COFFEY did not see the urgency or importance of this AO in terms of the Staff time it would require, but he did not object to the motion.

AYE: Starr, Adams, Klinkner, Penney, Brown, Jones, Coffey, Knepper
NAY: None

PASSED

~~5. 2003-002 Norene Properties~~

~~WITHDRAWN~~

~~6. 2002-221 Municipality of Anchorage. An Ordinance
amending Anchorage Municipal Code Title
21, Subsection 21.35.020 Definitions and
Rules of Construction, pertaining to
Accessory Structures.~~

Staff member ANGELA CHAMBERS explained that the existing code section states "Accessory, as applied to a use or a building or structure, means customarily subordinate or incidental to and located on the same lot with a principal use, building or structure." The Department, Land Use Enforcement and Building Safety Plan Review have applied the definition to mean that the accessory structure itself must be smaller in size than the principal structure in order for it to remain subordinate and incidental in size as well as use. The recommendation is to add a line to the definition to state, "The total size shall not exceed that of the principal structure(s)." There has been no objection from reviewing agencies. There has been considerable discussion with Land Use Plan Reviewers and Land Use Enforcement. The Birchwood Community Council objected to this stating that ordinance would change all zoning district regulations and the wording would preclude their enjoyment of a rural lifestyle and large lots. The Department believes there will be no change in how this definition has been interpreted in the past by both the Planning Department and by Building Safety Plan Reviewers for permitting purposes. The additional wording is primarily for clarification to the public.

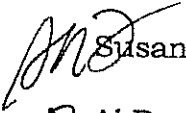
COMMISSIONER BROWN thought the last sentence of the definition is not clear in terms of what is meant by "total size" and whether that relates to the total square footage and/or the building footprint. MS. CHAMBERS understood "total size" refers to square footage, height, and footprint. COMMISSIONER BROWN noted that a two-story garage could, however, be of greater size than a one-story principal use. She asked if the intent is to not exceed the area of the footprint of the principal use, plus it cannot exceed the square footage of the existing principal use. MS. CHAMBERS believed the latter was the appropriate guide. COMMISSIONER BROWN suggested that clarification should be added to the definition.


**MUNICIPALITY OF ANCHORAGE
PLANNING DEPARTMENT
MEMORANDUM**

G.1.

DATE: April 7, 2003

TO: Planning and Zoning Commission

THROUGH:  Susan R. Fison, Director

FROM:  Al Barrett, Senior Planner

APPLICANT: MOA

REPRESENTATIVE: Don Warden, Director, Anchorage Memorial Park

SUBJECT: **2003-003:** Amendment to AMC 21.35.020 to add a definition for "cemetery" and to AMC 21.40.020 Public lands and institutions zone district to restrict where human remains may be buried.

Background:

The item was presented to the Planning and Zoning Commission on January 6, 2003. It was sent back to staff for further research. Mr. Warden, Anchorage Memorial Park Cemetery Director, has prepared a position paper containing additional research and addressing the specific questions raised at the meeting.

The Planning staff has also done some research. Cemeteries are a land use issue around the United States. Issues include consistency with a comprehensive plan, zoning compatibility, traffic generation, public health, buffering and landscaping, setbacks, ground stability and water table, and identifying and recording of grave sites for future land use decisions.

Where local jurisdictions do allow burial outside of a recognized cemetery (sometimes referred to as a family burial ground) there are many restrictions. Some of the restrictions include requirement of a casket, with standards for the casket; depth of burial; and various legal documentation requiring property surveys, certificates, dedications and so on to be filed or recorded with the property. One location in Louisiana also carries the caveat that the establishment of a human burial may result in use restrictions and title problems in the future, for the property owner.

Planning and Zoning Commission
Case 2003-003
Page 2

Recommendation:

Approve and forward the Planning Department proposed ordinance.

Cemetery

POSITION PAPER

on

AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE SECTION 21.35.020 TO DEFINE "CEMETERY" AND PROHIBIT THE BURIAL OF HUMAN REMAINS, OTHER THAN CREMATED REMAINS, IN ANY LOCATION OTHER THAN A CEMETERY.

by:

Donald B. Warden
Anchorage Memorial Park Cemetery Director

After reviewing the minutes of the Planning and Zoning Commission meeting of January 13, 2003, it is clear that a further explanation of the dynamics of this AO is warranted. I offer the following information for your consideration.

- In September 1999, a local Funeral Director asked me if human remains could be buried on private property.
- I research the code but could not find any specifics. I informed her that I didn't think you could bury on private property, but I couldn't find it in the Municipal Code. I suggested she contact the State of Alaska because I thought their laws might prohibit such action.
- Research revealed that the state has no laws regarding this action and they subsequently suggested the Funeral Director contact the Mayor's office in Anchorage. The Mayor's office turned the question over to the Bill Greene (at that time, Assistant Municipal Attorney).
- In mid October 1999, the Funeral Director called again and informed me that Mr. Greene offered a decision that it is not prohibited to bury human remains on private land. She mentioned that in her former city, it was a prohibited practice and perhaps Anchorage should consider enacting laws to prohibit this practice.
- I informed her I would do some more research and get back to her.
- I call Mr. Green to find out the particulars of the decision and he said there was nothing in the Municipal Code prohibiting the practice.
- I called Scott Janssen for his views on the subject. (He is a long-time local Funeral Director at Evergreen Memorial Chapels and he has a lot of experience in not only the industry but in Anchorage as well and he is (was) also an Anchorage Memorial Park Cemetery Advisory Board Member)
 - He was surprised to hear that the practice was not prohibited and offered that in his opinion, if it was common knowledge that you could bury on private property without paying the fees at any of the cemeteries, he would expect there to be many more burials on private property.

- I next called Sgt Stouff (786-8555) at the Anchorage Police Department and asked him what he thought about it from the standpoint of digging up remains in the future or seeing a neighbor digging a grave in the backyard?
 - His initial reaction was no way is this permitted in the Municipality, but said he would check it out from his end and get back to me
 - A few days later he called and said he couldn't find anything prohibiting the practice but he agreed to let us do the research.
 - He suggested I call Dr. Charlene Doris (former Alaska State Coroner, 694-5046) and talk to her about it. He knows she has experience in this area because she allowed a police officer to bury a child several years ago in Peters Creek (Subsequently disinterred and buried in a cemetery).
- I called Dr. Doris and she was very helpful with the following information:
 - She said she didn't know of anything prohibiting it (5 [now 7] years ago) but there were many inherent problems.
 - She generally had about five requests a year but only one inside the Municipality of Anchorage (the police officer)
 - She said she required that the Burial Transit Permit that goes to the state to include:
 - Proof of ownership of the land
 - Details of the exact location of the body (30 feet from property line, etc.)
 - A proper container to prevent leeching of bodily fluids (vault or sealed metal casket)
 - She said she also made sure they all knew that the land now became "consecrated land and you can't do with it as you please" (nothing could be built on it, etc.).
 - Also, if you sell the property, you need to petition the courts to disinter the remains and take them with you or rebury them in an approved cemetery
 - She also said that the State could not really track the burials and that some responsible agency needed to be able to retain those records for easy retrieval.
 - I told her that I thought the Anchorage Memorial Park Cemetery could easily do that if necessary.
 - She also stated that if they don't disinter upon selling (the property), they should be required to disclose that there are human remains buried on the property.
- On Oct 2, 2000, the Funeral Director again calls and informs me that the family originally requesting to bury their child in their backyard had petitioned the Planning and Zoning Commission to do so and the request had been declined.
- On Oct 6, 2000, I was informed that Pat Abney (former Anchorage Assembly Member) had called (Public Works) inquiring about this situation and requesting Craig Campbell's (former Executive Director) help in resolving the matter.
 - Mr. Campbell requested I send him information detailing Title 21 (AMC 21.50.140) and the requirements of a cemetery
 - I never heard back from the outcome of his discussions with Ms. Abney.

- The question of burying human remains in a location other than a cemetery in the Municipality of Anchorage was added to the agenda of the October 2000 meeting of the Anchorage Memorial Park Cemetery Advisory Board. Minutes of that discussion follow:
 - **A. (Added) Burial of Human Remains in a location other than a cemetery.** *Mr. Warden* asked if the Board had a position on the burial of human remains in locations other than in a cemetery. He briefed that there are no provisions in any regulation; Federal, State or City, that prohibits a citizen from burying human remains in locations other than a cemetery. The discussion centered around the future of the land that is used for a burial and the lack of a requirement to disinter the remains if the family moves. There is also the possibility of an expenditure of funds by the police to determine who a buried person is many years after the burial. Also, what is the community reaction to the appearance of possible headstones in neighborhoods. *Ms. Rapp* asked about cremated remains (ashes) and the subsequent rules governing their disposal. *Mr. Warden* briefed that there are no rules in Alaska governing the disposal of cremated remains but they don't pose the same concerns as a human body. The Board was collectively appalled that human remains could be buried in a location in the city other than a cemetery and discussed possible courses of action to remedy the situation. *Chair Hall* suggested a memo be drafted to propose a change to the Code to allow the burial of human remains only in an authorized cemetery and provide that to the Office of Planning, Development, and Public Works with a courtesy copy to the Municipal Attorney. *Ms. Linton* so moved, *Ms. Rapp* seconded, no discussion was tendered and *Mr. Warden* was instructed to compose a memo on behalf of the Board with their recommendation. **OPEN, Mr. Warden will provide an update until the change is complete or otherwise resolved.**

NOTE: The Anchorage Memorial Park Cemetery Advisory Board members of record at the time of this discussion were:

Ernie Hall, Chairman (term ends on Feb 14, 2003)
 Kay Linton (sadly, now deceased)
 Father Tim Crowley (former member)
 Marlene Rapp (former member)
 Scott Janssen (former member)

- The memo was submitted to the Municipal Attorney through the Office of Planning, Development, and Public Works.
- In January 2001, a recommended change to the Municipal Code was received from Dennis Wheeler, Assistant Municipal Attorney basically prohibiting the burial of human remains in a location other than an approved cemetery in accordance with AMC 21.50.140.
- The change was sent to the members of the Anchorage Memorial Park Cemetery Advisory Board by US Mail and approval to proceed with the AO/AM was obtained.
- I routed the document accordingly and in June 2001 was informed by Mr. Wheeler that I needed to have the Planning and Zoning Commission review the documents prior to submitting them to the Assembly.

- I thought the documents had been provided to the Planning Department for action and that they were working their way through the P&Z process. I did not pursue the issue again until I contacted the Planning Department in September 2002 to find out where the documents were in their process. At that time I learned that they had not been provided the documents, they were not on the Planning and Zoning Commission's agenda and that they were not in their system at all. I resurrected the original "draft" AO/AM, updated them and asked the Planning Department to begin the process of approval.
- The Planning Department took some exception to the original AO as written and pursued action as described in the current AM.
- The document was on the agenda for review at the January 13, 2003 Planning and Zoning Commission meeting. I planned to attend and received advice that it would probably not be reviewed until about 8:00 PM. I arrived at 7:35 PM and the issue had already been reviewed and returned to the Staff for research.
- I reviewed the minutes of that meeting and offer the following answers to you're questions and comments from both commissioners and constituents.
 1. **BOBBI WELLS stated this AO was brought up at the Birchwood Community Council meeting and the fact that it costs money to be put in the cemetery and there is an annual fee were issues.**
 - Please see Scott Janssen's comments above. Incidentally, there are no annual fees in any cemetery in Anchorage. A one-time fee is collected at the time of burial and both Anchorage and Angelus Memorial Parks have perpetual funds (non-revocable trusts) established to maintain the cemeteries in perpetuity when they become full. All three cemeteries in Anchorage, including Ft. Richardson National Cemetery, are not for profit cemeteries.
 2. **BOBBI WELLS: The Community Council suggested toe tags because a person can still be buried on their own property.**
 - Almost all metal caskets have a hermetically sealed tubular area where information about the deceased is placed. This is used in the event the casket is disinterred for one reason or another or, as in the case in Mississippi a few years ago, a large flood liquefied the ground, floating the caskets and they drifted away in the flood. Wooden caskets have no such provision. Due to improved technology, professional ceterierians today have many means at their disposal to identify the location of current burials. Rest assured that if a loved one is buried in one of the Anchorage Cemeteries, records are safeguarded to ensure this information will be available forever and ever. If burial takes place outside of a managed cemetery, no such guarantee can be made.
 3. **BOBBI WELLS (Birchwood Community Council): if the community was more forward thinking people could be buried in a vertical rather than horizontal position.**
 - This is probably a discussion for another time and possibly another place, but I have not had any family ask about the possibility of a vertical burial.
 4. **COMMISSIONER BROWN was curious what was the rationale for this AO.**
 - The rationale is as stated throughout this position paper.

5. **COMMISSIONER BROWN asked if other cities have similar requirements for human remains to be buried only in a cemetery.**
 - Many other cities have adopted rules prohibiting burial of human remains in any location other than a cemetery. Among others: Richmond, VA, Charlotte, NC, Chicago, IL, Des Moines, IO, Charleston, SC and in 1960 our own Fairbanks adopted section 1806 which states that "It shall be unlawful for any person to bury any person within the city limits, or within a mile of the city, except in an established cemetery".
 6. **COMMISSIONER BROWN stated she would not support this AO without at least understanding whether this is a common practice or something a private cemetery board is requesting.**
 - **common practice:** This is a reasonably common practice across the nation as shown in section 5 above. I think we sometimes forget that we are a fairly new state and city and some of the generally accepted practices of other states and cities have just not made it on our books yet.
 - **something a private cemetery board is requesting:** This issue was brought forth by a concerned Funeral Director who had experience from another city and not a Cemetery Director or (Private or Public) Cemetery Board. This is not an issue of requiring human remains be buried in cemeteries so cemeteries can reap the revenues, but rather a land use issue.
 7. **COMMISSIONER BROWN asked what would be defined as the city limits, noting that the building permit limits encompass old Anchorage and Eagle River lies outside of that, yet is within the Municipality.**
 - The ordinance does not state "city limits" and since the Anchorage Municipal Code applies to the entire Municipality, it is my assumption that this amendment would apply accordingly. The intent of the Anchorage Memorial Park Cemetery Advisory Board was for the change to apply to the entire Municipality.
 8. **COMMISSIONER KLINKNER also wanted to better understand the rationale for this AO, in particular, if it is addressing a public health or land use issue.**
 - I contacted two experienced local Funeral Directors and with one exception of a very rare disease, there are no public health issues regarding burial of human remains. However, I suppose it could be a public health issue if the body was not actually buried, but left above ground or otherwise kept around the property. As it now stands, nothing actually requires that a body be buried. With that said, the initiative was not originally brought forth because of a public health issue, but rather a land use issue.
- I could not have stated one important aspect of the rationale for this initiative better than Bobbie Wells stated as described in the minutes of the meeting. "...if this is not passed there will be problems in later years because, as development occurs per Anchorage 20/20 for more condensed density, there is danger of digging up human remains that would call for a large investigation." I agree completely. Also, the Anchorage Memorial Park Cemetery Advisory Board basically thought this was a common sense issue that needed to be positively resolved for the betterment of the future of Anchorage.
 - I encourage the Planning and Zoning Commission to pass this on to the Assembly with your most positive recommendation.

be resolved. There is a method through an existing contract. MR. POTTER stated that bonding could be achieved through one of a variety of methods. The most straightforward would be for the State to amend the scope of the contract with the contractor. COMMISSIONER COFFEY asked if there is a subdivision agreement associated with this project. MR. POTTER replied in the negative. MS. CHAMBERS stated there is an allowance in the code to use subdivision agreement requirements for landscaping bonds for conditional uses and site plans.

COMMISSIONER KLINKNER asked how condition 5 would operate in the unlikely event there is an appeal of this evening's decision. MS. CHAMBERS recognized this point and suggested it could be contingent on the 15-day period in which an appeal can be filed or a stop work order could be issued. MR. POTTER noted the question is moot because this conditional use approval would not be final until an appeal is resolved.

AYE: Starr, Klinkner, Penney, Brown, Jones, Coffey, Knepper
NAY: None
ABSTAIN: Adams

PASSED

4. 2003-003

Municipality of Anchorage. An Ordinance amending Anchorage Municipal Code Section 21.35.020 to define "cemetery" and prohibit the burial of Human Remains, in any location other than a cemetery.

Staff member AL BARRETT indicated this AO is brought forward by the Anchorage Memorial Park Cemetery Advisory Board. Don Warden, Director of Anchorage Memorial Park had initiated this request. The draft AO is not the version provided from the Legal Department, it is from the Planning Department. He stated that AMC 21.35.020 adds the definition of cemetery and AMC 21.40.020 item B.5 was added by the Legal Department, but had been put in the definitions section and the Department has included it in the conditional use section of the PLI code section, as appropriate.

The public hearing was opened.

BOBBI WELLS stated this AO was brought up at the Birchwood Community Council meeting and the fact that it costs money to be put in the cemetery and there is an annual fee were issues. Another issue was that if this is not passed there will be problems in later years because, as development occurs per Anchorage 2020 for more condensed density, there is danger of digging up human remains that would call for a large investigation. The Community Council suggested toe tags because a person can still be buried

on their own property. She stated if the community was more forward thinking people could be buried in a vertical rather than horizontal position.

The public hearing was closed.

COMMISSIONER BROWN moved for approval of case 2003-003.

COMMISSIONER ADAMS seconded.

COMMISSIONER BROWN was curious what was the rationale for this AO. She asked if other cities have similar requirements for human remains to be buried only in a cemetery. MR. BARRETT responded that Staff did not conduct research into this. COMMISSIONER BROWN stated she would not support this AO without at least understanding whether this is a common practice or something a private cemetery board is requesting. MR. BARRETT did not realize that Mr. Warden's original memorandum was not in the packet, however, he noted that it indicates that research revealed that "most communities across the U.S. have laws prohibiting such burial within city limits. Anchorage has no such law. This definition requires human remains, other than cremated remains, to be buried in a cemetery, as specified in the conditional use standards." COMMISSIONER BROWN asked what would be defined as the city limits, noting that the building permit limits encompass old Anchorage and Eagle River lies outside of that, yet is within the Municipality.

COMMISSIONER KLINKNER thought there was a mistaken impression that cemeteries are a conditional use, but they are a permitted use in the PLI zone. MR. BARRETT indicated this is correct, per standards in that section. COMMISSIONER KLINKNER also wanted to better understand the rationale for this AO, in particular, if it is addressing a public health or land use issue.

COMMISSIONER BROWN withdrew her motion with the concurrence of the second.

COMMISSIONER BROWN moved to return this AO to Staff for further research to find out the practice in other cities, is it a public health issue, what does the State require, and is it a land use question at this time. The matter shall be brought back when that research is finished.

COMMISSIONER ADAMS seconded.

Given the Staff's current workload, COMMISSIONER COFFEY did not see the urgency or importance of this AO in terms of the Staff time it would require, but he did not object to the motion.

AYE: Starr, Adams, Klinkner, Penney, Brown, Jones, Coffey, Knepper
NAY: None

PASSED

~~5. 2003-002 Norene Properties~~

~~WITHDRAWN~~

~~6. 2002-221 Municipality of Anchorage. An Ordinance
amending Anchorage Municipal Code Title
21, Subsection 21.35.020 Definitions and
Rules of Construction, pertaining to
Accessory Structures.~~

Staff member ANGELA CHAMBERS explained that the existing code section states "Accessory, as applied to a use or a building or structure, means customarily subordinate or incidental to and located on the same lot with a principal use, building or structure." The Department, Land Use Enforcement and Building Safety Plan Review have applied the definition to mean that the accessory structure itself must be smaller in size than the principal structure in order for it to remain subordinate and incidental in size as well as use. The recommendation is to add a line to the definition to state, "The total size shall not exceed that of the principal structure(s)." There has been no objection from reviewing agencies. There has been considerable discussion with Land Use Plan Reviewers and Land Use Enforcement. The Birchwood Community Council objected to this stating that ordinance would change all zoning district regulations and the wording would preclude their enjoyment of a rural lifestyle and large lots. The Department believes there will be no change in how this definition has been interpreted in the past by both the Planning Department and by Building Safety Plan Reviewers for permitting purposes. The additional wording is primarily for clarification to the public.

COMMISSIONER BROWN thought the last sentence of the definition is not clear in terms of what is meant by "total size" and whether that relates to the total square footage and/or the building footprint. MS. CHAMBERS understood "total size" refers to square footage, height, and footprint. COMMISSIONER BROWN noted that a two-story garage could, however, be of greater size than a one-story principal use. She asked if the intent is to not exceed the area of the footprint of the principal use, plus it cannot exceed the square footage of the existing principal use. MS. CHAMBERS believed the latter was the appropriate guide. COMMISSIONER BROWN suggested that clarification should be added to the definition.

**MUNICIPALITY OF ANCHORAGE
PLANNING DEPARTMENT
MEMORANDUM**

DATE: January 6, 2003

TO: Planning and Zoning Commission

THROUGH: Susan R. Fison, Director *CE*

FROM: *AB* Al Barrett, Senior Planner

APPLICANT: MOA

REPRESENTATIVE: Don Warden, Director, Anchorage Memorial Park

SUBJECT: **2003-003:** Amendment to AMC 21.35.020 to add a definition for "cemetery" and to AMC 21.40.020 Public lands and institutions zone district to restrict where human remains may be buried.

Background:

The Anchorage Memorial Park Cemetery Advisory Board voted on October 9, 2002 to recommend changes to Title 21 because the subject of cemeteries and burials is not completely addressed. Currently, "cemetery" is not defined and there are no restrictions on the burial of human remains, cremated or not, in MOA.

The Municipal Attorney's office provided a draft definition of "cemetery" containing the regulatory/enforcement sentence "No person shall inter human remains (other than cremated remains) in the Municipality of Anchorage in any location other than an approved cemetery." The definition of cemetery is adequate and Planning Staff did not change it, but Planning Staff has taken the regulatory sentence and moved it to section 21.40.020 PLI. We believe the enforcement issue is more clearly stated and enforceable in the zoning district section rather than the definition section.

Recommendation:

Approve and forward the Planning Department proposed ordinance.



**MUNICIPALITY OF ANCHORAGE
ASSEMBLY MEMORANDUM**

No. _____

Meeting Date: _____

From: Mayor

Subject: AO 2003-

Amending AMC 21.35.020 by adding a definition for "cemetery" and amending 21.40.020 to allow burials, entombments, interments of human remains in only the Public Lands and Institutions (PLI) district (excepting cremated remains).

1 Title 21 of the Anchorage Municipal Code does not define cemetery or restrict
2 burial of human remains to cemeteries. Cremated remains are excepted,
3 they may be buried, stored or scattered outside of a cemetery. On October 9,
4 2002 the Anchorage Memorial Park Cemetery Advisory Board voted
5 unanimously to recommend that the law be revised to prohibit the burial of
6 human remains in any location other than an authorized cemetery.

7 AMC 21 was reviewed and it was felt that the current Code provisions, which
8 allow cemeteries in only the PLI district, are adequate. It was deemed
9 necessary to add "cemetery" to the definition section, AMC 21.35.020; and to
10 add a reference to Cemeteries, AMC 21.40.020 PLI, to make it explicit where
11 human remains may be buried.

Reviewed by:

Reviewed by:

Harry J. Kielsing Jr.
Municipal Manager

Michael J. Scott, Executive Director
Office of Planning, Development, and
Public Works

Respectfully submitted,

Prepared by:

George P. Wuerch
Mayor

Susan R. Fison, Director
Planning Department

Submitted by: Chair of the Assembly at
the Request of the Mayor
Prepared by: Planning Department
For reading:

Anchorage, Alaska
AO 2003-_____

AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE SECTIONS
21.35.020 TO DEFINE "CEMETERY" AND SECTION 21.40.020 TO PROHIBIT THE
BURIAL OF HUMAN REMAINS, OTHER THAN CREMATED REMAINS, IN ANY
LOCATION OTHER THAN A CEMETERY, IN THE PUBLIC LANDS AND
INSTITUTIONS (PLI) ZONE DISTRICT.

Section 1. Anchorage Municipal Code subsection 21.35.020 is hereby amended by adding a
definition for "cemetery" to read as follows: (the remainder of the definitions are not affected
and therefore not set out)

21.35.020

Cemetery means a graveyard, burial ground, or other place of interment,
entombment or sepulture of one or more human bodies or remains.

Section 2. Anchorage Municipal Code subsection 21.40.020 PLI public lands and institutions
district is hereby amended to read as follows: (the remaining sections are not affected and are
therefore not set out)

21.40.020

B. Permitted principal uses and structures.

5. Cemeteries, subject to the standards set forth in section 21.50.140. Human
remains, other than cremated remains, may not be buried, entombed or
interred, above or below ground, except in an approved cemetery.

Section 3. This ordinance shall become effective immediately upon its passage and approval
by the Assembly.

1
2 PASSED AND APPROVED by the Anchorage Assembly this _____ day
3 of _____ 2003
4
5
6
7

ATTEST:

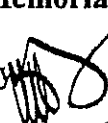

Chair

Municipal Clerk

LAW DEPARTMENT VERSION



MUNICIPALITY OF ANCHORAGE
OFFICE OF THE MUNICIPAL ATTORNEY
MEMORANDUM

DATE: June 6, 2001
TO: Don Warden, Director, Anchorage Memorial Park
THRU: William A. Greene, Municipal Attorney 
FROM: Dennis A. Wheeler, Deputy Municipal Attorney 
SUBJECT: AO re definition of cemetery

Please find attached the requested ordinance. You will need to have the Planning and Zoning Commission review this ordinance prior to transmittal to the Assembly. Also enclosed is the corresponding AM for your use when the time comes. Prior to routing for signatures, you will need to put together the pink routing sheet and SEE. Please call if you have any questions.

MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

No. _____

Meeting Date: _____

1 **From:** Mayor Wuerch

2
3 **Subject:** AO 2001-____; Amending AMC 21.35.020 by adding a definition for
4 "cemetery".
5

6 AMC 21 Land Use Planning does not define the word *cemetery*. However, cemeteries are
7 permitted by conditional use in certain zoning districts. On October 9, 2000, the Anchorage
8 Memorial Park Cemetery Advisory Board voted unanimously to recommend that the Anchorage
9 Municipal Code and or the Anchorage Municipal Code of Regulations be changed to prohibit the
10 burial of human remains in any location other than an authorized cemetery. AMC 21 was
11 reviewed by staff and it is felt the current code provisions adequately state where a cemetery may
12 be located, but we felt it was necessary to add a definition for *cemetery*.
13

14
15 Concur

Recommended by

16
17
18
19 _____
20 Harry J Kieling, Jr
21 Municipal Manager

22
23
24
25 _____
26 Craig E. Campbell, Executive Director
27 Office of Planning, Development and Public Works

28
29 Respectfully submitted:

Prepared by:

30 _____
31 George Wuerch
32 Mayor

33
34 _____
35 William A. Greene
Municipal Attorney

G:\Mat\Dennis\Am\cemetery definition.doc

Submitted by: Clerk of the Assembly at the
Request of the Mayor
Prepared by: Department of Law
For reading:

ANCHORAGE, ALASKA
AO No. 2001-____

AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE SECTION 21.35.020 TO
DEFINE "CEMETERY" AND PROHIBIT THE BURIAL OF HUMAN REMAINS, OTHER THAN
CREMATED REMAINS, IN ANY LOCATION OTHER THAN A CEMETERY.

Section 1. Anchorage Municipal Code subsection 21.35.020 is hereby amended by adding a
definition for "cemetery" to read as follows: *(the remainder of the definitions are not affected and
therefore not set out)*

21.35.020 Definitions and rules of construction.

Cemetery means a graveyard, burial ground, or other place of interment, entombment,
or sepulture of one or more human bodies or remains. A person may not establish a
cemetery except within specified zoning districts and in conformance with section
21.50.140. No person shall inter human remains (other than cremated remains) in the
Municipality of Anchorage in any location other than an approved cemetery.

Section 2. This ordinance shall become effective immediately upon its passage and
approval by the Assembly.

PASSED AND APPROVED by the Anchorage Assembly this _____ day of
_____, 2001.

Chair of the Assembly

ATTEST:

Municipal Clerk

**PLANNING & ZONING
COMMISSION
PUBLIC HEARING
January 6, 2003**

**SUPPLEMENTAL INFORMATION
G.4. Case 2003-003
Ordinance to Define "Cemetary"**

72

MUNICIPALITY OF ANCHORAGE

DEPARTMENT OF CULTURAL & RECREATIONAL SERVICES PARKS & RECREATION DIVISION

MEMORANDUM

RECEIVED

JAN 02 2003

MUNICIPALITY OF ANCHORAGE
PLANNING & ZONING DIVISION

DATE: December 30, 2002
TO: Jerry T. Weaver, Supervisor, Zoning and Platting Division, Planning Department
THRU: John Rodda, Manager
FROM: Tom Korosel, Park Planner
SUBJECT: Planning and Zoning Case Reviews—Anchorage Parks and Recreation Service Area

Parks and Recreation has the following comments:

CASE NO. **CASE**

- 2002-031** **Site selection for a public facility** (Department of Health and Human Services Facility).
The DHHS-preferred site, APU property adjacent to University Lake Drive, abuts University Lake Park. The APU site as well as the two alternative sites presented (3500 Tudor Rd. and Northway Business Park, respectively), also are adjacent to or near existing or planned multi-use trails. Parks and Recreation believes that potential impacts on park and trail facilities likely could be mitigated by appropriate site planning and design of the proposed facility. Mitigating features may include sufficient setback for adequate buffering, as well as appropriate screening and/or visual enhancement landscaping. Parks and Recreation supports selection of a site of sufficient size to accommodate appropriate design features.
- 2003-002** **Zoning conditional use for an off-street parking lot.**
The *Areawide Trails Plan* shows a planned multi-use paved trail along McRae Rd.
- 2003-003** **Ordinance amending AMC Title 21 defining a cemetery.**
No comment.
- 2003-004** **Zoning conditional use for the Alaska Psychiatric Institute Replacement Facility.**
It appears no Parks and Recreation facility would be affected by the proposed project; therefore, Parks and Recreation has no comment.
- 2003-009** **Concept/final approval of a conditional use permit for a retail food store selling alcoholic beverages** (Williams Express, DeBarr Rd./Boniface Pkwy.).
The site is opposite Russian Jack Springs Park and abuts existing and planned multi-use trails.
- 2003-010** **Concept/final approval of a conditional use permit for a retail food store selling alcoholic beverages** (Williams Express, Abbott Rd./New Seward Hwy.).
The site abuts existing and planned multi-use trails.

**PLANNING & ZONING
COMMISSION
PUBLIC HEARING
January 6, 2003**

**SUPPLEMENTAL INFORMATION
G.4. Case 2003-003
Ordinance to Define Cemetery**

Case #: 2003-003
Type: Ordinance amendment (definition of cemetery)

The third sentence is a use restriction, which belongs in AMC 21.40, and is redundant because of AMC 21.40.015.B.

(Reviewer: Don Dolenc)

Content Information**Content ID :** 001007

Title: Amending AMC 21.35.020 by adding a definition for cemetery and amending AMC 21.40.020 to allow burials, entombments and interments of human remains in the Public Lands and Institutions (PLI) district (excepting cremated remains).

Initiating Dept: Planning

Description: Amending AMC 21.35.020 by adding a definition for cemetery and amending AMC 21.40.020 to allow burials, entombments and interments of human remains in the Public Lands and Institutions (PLI) district (excepting cremated remains).

Date Prepared: 7/25/03 3:25 PM**Director Name:** Susan R. Fison**Document Number:** AO 2003-132

Assembly Meeting Date 9/23/03 12:00 AM
MM/DD/YY:

Public Hearing Date 10/7/03 12:00 AM
MM/DD/YY:

Workflow History

<u>Workflow Name</u>	<u>Action Date</u>	<u>Action</u>	<u>User</u>	<u>Security Group</u>	<u>Content ID</u>
AllOrdinanceWorkflow	7/25/03 3:28 PM	Checkin	weaverjt	Public	001007
Planning_SubWorkflow	7/28/03 11:29 AM	Approve	fisonsr	Public	001007
PDPW_SubWorkflow	7/30/03 9:21 AM	Approve	holtanhc	Public	001007
OMB_SubWorkflow	8/4/03 2:20 PM	Approve	wiltsep	Public	001007
AllOrdinanceWorkflow	8/4/03 4:57 PM	Reject	fehlenrl	Public	001007
AllOrdinanceWorkflow	8/5/03 2:16 PM	Checkin	weaverjt	Public	001007
Planning_SubWorkflow	8/6/03 10:21 AM	Approve	fisonsr	Public	001007
PDPW_SubWorkflow	8/10/03 5:50 PM	Approve	leblancdc	Public	001007
OMB_SubWorkflow	8/13/03 1:19 PM	Approve	wiltsep	Public	001007
Legal_SubWorkflow	8/18/03 12:53 PM	Approve	fehlenrl	Public	001007
MuniManager_SubWorkflow	9/3/03 5:23 PM	Approve	leblancdc	Public	001007
MuniMgrCoord_SubWorkflow	9/15/03 11:44 AM	Approve	abbottmk	Public	001007