

Chapter 159: Ashe County Cemetery Ordinance

SECTION 159.1 LEGAL PROVISIONS

1.1 PURPOSE

The purpose of this ordinance is to regulate the establishment, use, maintenance, and protection of cemeteries within Ashe County. An ordinance to protect the public health, safety and general welfare by establishing regulations, to require proper record-keeping; and to preserve historic, family, and abandoned cemeteries, to provide penalties for the violation of said ordinance; and to repeal all ordinances or parts of ordinances in conflict therewith.

1.2 TITLE

This ordinance shall be known and may be cited as the "Ashe County Cemetery Ordinance."

1.3 JURISDICTION

This provision of this ordinance shall apply within the corporate boundaries of Ashe County, excluding any area that is incorporated by a municipality.

1.4 AUTHORITY

The Ashe County Board of Commissioners, pursuant to the responsibilities and privileges outlined in N.C. GEN. STAT. 65-111 and N.C. GEN. STAT. 65-113; adopts, approves, enacts, and ordains, this ordinance

1.5 DEFINITIONS

(a) "Cemetery" means any land use or intended to be used for the interment of human remains, including public, private, family, religious, fraternal, historic, or abandoned cemeteries.

(b) "Interment" means burial of the deceased by earth burial, entombment, or inurnment.

(c) "Burial Plot" means a space of ground in a cemetery intended for the burial of one or more human bodies.

(d) "Grave Marker" or "Monument" means any stone, marker, tombstone, plaque, plants, shrubbery, or memorial placed at burial site for the acknowledgment of the deceased.

(e) "Abandoned Cemetery" means a cemetery where no owner or responsible party can be named, or where maintenance has ceased for a period of five (5) or more years. The County may designate a cemetery as abandoned upon review and after efforts to identify any owner or responsible operator. Upon formal designation, the County may assume responsibility for maintenance, marking, and preservation of such cemetery to protect public health, safety, and respect for the deceased. Where permitted by law, the County may assess cost of maintenance or remediation against the property or pursue other lawful means to fund preservation.

(g) “Historic Cemetery” means a cemetery more than fifty (50) years old or determined to contain significant cultural, genealogical, or historical value.

(h) “Public Cemeteries” means that are open to the general public without qualifications for purchasing or owning a grave.

(i) “Private Cemeteries” means cemeteries that are owned by individuals or businesses and are not open to the general public.

(j) “Veteran Cemeteries” means specifically for those who have served in the military.

(k) “Family Cemeteries” means for family members. Establishing them requires a special use permit and must comply with the NC Cemetery Act.

(l) “Green or Natural Cemeteries” means a type of cemetery that uses environmentally friendly burial practices.

(m) “Deeded Cemeteries” means cemeteries “cut out” or deeded in the cemetery name with a qualifying board of trustees.

1.6 SEVERABILITY

If for any reason any one or more sections, sentences, clauses or part of this ordinance is for any reason held to be invalid, such decision shall not affect, impair, or invalidate the remaining provisions of this ordinance, but shall be confined in its operation to the specific sections, sentences, clauses, or parts of this ordinances in any one or more instances shall not affect or prejudice in any way the validity of this Ordinance in any other instance.

1.7 EFFECTIVE DATE

This Ordinance shall take effect and be in force from and after the date of its adoption.

1.8 ADOPTION

Duly adopted by the Board of County Commissioners of the County of Ashe, North Carolina, this the _____ 2026.

Ashe County Board of Commissioners

Todd McNeil, Chairman

Section 159.2: Maintenance of Cemeteries

2.1 Responsibility of Landowner

The following acts are hereby prohibited

- A. Disturbing human remains and graves;
- B. Disturbing the peace, defacing plants, and trespassing after sunset;
- C. Littering, disturbing gravesites, and damaging cemetery fences;
- D. Disturbing funerals, making loud noises;
- E. Hunting or discharging of weapons in the boundaries of a cemetery or across the boundaries; except for Military Funerals and Memorial Day;
- F. Planting crops on, over, or through the boundaries of a cemetery;
- G. Removal of any grave marker or memorial for any reason except as outlined by NCGS 65-106;
- H. Any action to destroy, mutilate, deface, injure or remove any tomb, monument, gravestone or other structure placed in the cemetery or any plank or fence or part of a fence, railing or other structure within the cemetery or from the fence surrounding the cemetery, which is placed for the protection or ornament of the cemetery or any tomb, monument, gravestone or space;
- I. Any action to destroy, cut down, break, remove or injure any vegetation that may have been planted or that may be growing in the cemetery which is intended to honor the deceased besides that of regular and orderly maintenance of the site;
- J. Any person from allowing his or her animal, including animals intended for agriculture, except service animals trained to assist the person with his or her specific disability, to enter any cemetery, and all dogs and fowl, except said service animals, found within the enclosures or grounds of any cemetery shall be impounded;
- K. Any person from using the cemetery as a playground;
- L. Unlawfully write or scribble on, mark, paint, deface, any cemetery tombstones, headstones, field markers, and monuments.

Section 159.3: Access of Cemeteries on Private Property

3.1 Access Cemetery with Property Owners Permission

Those wishing to access a private cemetery with permission from the landowner must comply with NCGS 65-101.

3.2 Access Cemetery without Property Owner Permission

If permission to enter a private cemetery is not granted to an individual that individual has a right to petition the Clerk of Superior Court for access and outlined in NCGS 65-102.

Section 159.4: Cemetery Board

4.1 Powers and Duties

- (A) Pursuant to the authority granted by GS 160D-306 the Ashe County Commissioners are authorized to create the Ashe County Cemetery Committee.
- (B) Make studies of all cemeteries located within the boundaries of Ashe County
- (C) Determine objectives to be sought in the preservation and maintenance of such cemeteries.
- (D) Prepare and recommend plan adoption for achieving these objectives.
- (E) Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner.
- (F) Advise the Board of Commissioners concerning the use and amendment of means for carrying out plans.
- (G) Exercise any functions in the administration and enforcement of various means for carrying out plans that the Board of Commissioners may direct.
- (H) Exercise functions which may include Research, Identify, inventory, GPR, map, describe, and permanently record existing cemeteries in Ashe County that meet the federal definition of "historic" (meaning they are at least 50 years old) ([36 CFR §60.4](#))) regardless of size, type, physical characteristics, or location. This is done to permanently preserve historical, genealogical, sociological, demographic, and cultural data for descendants, researchers, and interested North Carolinians.

4.2 Appointments

The Board of Commissioners are required to appoint the members of the Cemetery Committee. The Committee shall be made up of at least 5 members and be appointed to terms of at least 4 years.

Section 159.5: Penalties and Enforcement

Section 5.1 Citation & Penalties

- a. Any person, firm or corporation who violates any of the provisions of this ordinance shall be charged with a municipal criminal action by the County Authorities and shall be subject to a fine of up to one hundred fifty dollars (\$150.00) per day that the violation continues to exist and shall constitute a separate offense. No prosecutions here under shall not prevent civil or criminal proceedings for abatement and termination of the activity complained of.
- b. Any criminal penalty issued by Ashe County does not invalidate or supersede the requirements and punishments established by NCGS 14-148 and these requirements and subsequent penalties may be enforced concurrently.

- c. All law enforcement agencies, officers, certified police officers, and/or officials of the state, or any County code enforcement officer, are hereby authorized, empowered, and directed to enforce compliance with this article.