# VACATING CEMETERY IN CITY OR VILLAGE
## Act 164 of 1871

AN ACT to provide for vacating cemetery plats and cemetery grounds in the limits of incorporated cities and villages.

**History:** 1871, Act 164, Eff. July 18, 1871.

*The People of the State of Michigan enact:*

### 128.41 Vacation of cemetery; jurisdiction of chancery court.

Sec. 1. That whenever the trustees of any incorporated village, or the common council of any city, shall by resolution adopted by them, determine that the dead bodies buried in any public or private cemetery located in such city or village should be removed therefrom, for the reason that such cemetery shall have become commons, or has become neglected or abandoned by its owner or owners, or has become a public nuisance, or shall impede the growth of any such city or village, or shall endanger the health of the people living in the immediate vicinity thereof, the circuit court in chancery of the county in which such cemetery is located is hereby authorized to vacate the same, or any part thereof, on petition made to such court as hereinafter provided.

**History:** 1871, Act 164, Eff. July 18, 1871;—CL 1871, 3423;—How. 4790;—CL 1897, 3485;—CL 1915, 3481;—CL 1929, 2663;—Am. 1941, Act 149, Eff. Jan. 10, 1942;—CL 1948, 128.41.

### 128.42 Petition of trustees or council to vacate; notice.

Sec. 2. That such petition shall be made in behalf of said trustees or common council by an attorney or agent appointed by them for that purpose, who shall file a petition signed and sworn to by him in the office of the register of said court for the proper county, which petition shall set forth his authority as attorney or agent, the particular reasons for making and filing such petition and a distinct description of the premises on which such cemetery is located, which petition shall be filed as aforesaid 30 days previous to the first day of the term for which such petition shall be noticed for hearing. That notice of the pendency and hearing of such petition shall be given for the same space of time by publishing the same in a newspaper published in the proper county once in each week for 4 successive weeks prior to the first day of the term when such case is noticed for hearing.

**History:** 1871, Act 164, Eff. July 18, 1871;—CL 1871, 3424;—How. 4791;—CL 1897, 3486;—CL 1915, 3482;—CL 1929, 2664;—CL 1948, 128.42.

### 128.43 Court proceedings; order to vacate; recording.

Sec. 3. That the hearing of such petition may be continued from term to term in the discretion of the court, without further notice, that all testimony may be taken in open court or the taking of the same may be referred in the discretion of the court to a circuit court commissioner of the proper county. That under direction of the court proper issues may be made for the determination of all questions of law and fact and all questions of compensation to any person or persons to be affected by such proceedings and all issues of fact may be tried by a jury if the court shall so order, and any person adversely interested may cause himself to be made defendant to such petition. In all cases where reference shall be made to a jury to determine the compensation to be paid to any person or persons as aforesaid, the proceedings upon such reference shall so far as practicable be like those had in cases where a jury is empaneled to ascertain and determine the necessity of taking lands, franchises and other property for the construction of railroads and to apprize the damages and compensation to be allowed therefor. If upon the hearing of such petition the petitioner shall produce satisfactory evidence to the court that said trustees or common council have determined as aforesaid, that the notice required by this act has been given, and that such cemetery should be vacated in whole or in part as a place of burial for any of the reasons given in this act for vacating cemeteries, such court shall thereupon order that such cemetery shall be vacated in whole or in part as a place of burial. That a copy of such order certified by the register of such court under his seal shall be recorded by the petitioner in the office of the register of deeds of the proper county.

**History:** 1871, Act 164, Eff. July 18, 1871;—CL 1871, 3425;—How. 4792;—CL 1897, 3487;—CL 1915, 3483;—CL 1929, 2665;—CL 1948, 128.43.

### 128.44 Reinterment; time of year; expenses, payment.

Sec. 4. That when any cemetery shall be vacated as provided in this act, the said trustees or common council shall cause all the dead bodies and remains buried in such cemetery to be re-interred in the cemetery

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of such city or village, if they have one, and if not, then in some suitable cemetery not more than 6 miles from the nearest corporate limits of said city or village in a prudent, careful and respectful manner, and shall cause to be removed and again erected over the proper remains, all permanent fences around graves and lots, all tombstones and monuments, with as little injury as the case will admit, Provided, That no removal of said bodies and remains shall be made during the months of June, July, August or September, such removal, and the costs of the proceedings under this act, shall be at the expense of and paid by the city or village in which such cemetery is located.

**History:** 1871, Act 164, Eff. July 18, 1871;—CL 1871, 3426;—How. 4793;—CL 1897, 3488;—CL 1915, 3484;—CL 1929, 2666;—CL 1948, 128.44.

### 128.45 Price of lots repaid.

Sec. 5. In all cases where the title to the land vacated shall revert to such city or village, such city or village shall on demand and upon the conveyance of said lot (where conveyance may be necessary) to said city or village, repay to any owner the price he may have paid for his lot.

**History:** 1871, Act 164, Eff. July 18, 1871;—CL 1871, 3427;—How. 4794;—CL 1897, 3489;—CL 1915, 3485;—CL 1929, 2667;—CL 1948, 128.45.

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