

# TITLE 2

## COUNTY GOVERNMENT; ADMINISTRATION

### CHAPTER 291

[Adopted 07-680 eff 8/23/07]

#### DISINTERMENT HEARING PROCEDURES CODE

#### 291.010 Purpose

(A) The Board from time to time conducts hearings pursuant to ORS 97.220 regarding the disinterment of remains in cemeteries.

(B) The Board's purpose is to establish the following minimal requirements and procedure to consider the matter of disinterments filed in its jurisdiction.

[Adopted 07-680 eff 8/23/07]

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#### I. GENERAL PROVISIONS

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#### 291.005 Title

This Chapter, LCC 291.005 to 291.999, shall be known and may be cited as the "Linn County Disinterment Hearing Procedures Code" or simply as the "Disinterment Hearing Code."

#### 291.015 Definitions

(A) As used in this Chapter, unless the context requires otherwise:

(1) "**Appear**" or "**appearance**" means the submission of testimony or evidence in a disinterment hearing, whether oral or written, when such evidence has been received on the record by the decision maker.

(2) "**Application**" means the completed application form (substantially complying with Appendix 1) having affixed on its face proof of being sworn to before a registered notary including and attached to it such documents and evidence submitted by an applicant. The application is an evidentiary document setting forth a matter to be decided by a decision maker. The application is used by the Board for the purpose of making a determination whether the information as submitted by the applicant may be deemed complete for purposes of considering the matter and rendering a final decision on the matter. For purposes of this paragraph, petition has the same definition as application.

(3) "**Applicant**" means the party seeking who has filed with the Board an application seeking the disinterment of remains located in a cemetery. For purposes of this definition, petitioner has the same definition as applicant.

(4) **“Board,”** means the Linn County Board of Commissioners.

(5) **“Cemetery”** means a place in Linn County dedicated to and used, or intended to be used, for the permanent interment of human remains. The term includes mausoleums and columbariums as those terms are defined in ORS 97.010.

(6) **“Chairperson”** or **“chair”** means the person presiding over the Board.

(7) **“Condition”** means a limitation that must be satisfied or avoided as a basis for granting permission to disinter.

(8) **“Conflict of interest”**

(a) **“Actual conflict of interest”** has the meaning given the term in ORS 244.020 (1).

(b) **“Potential conflict of interest”** has the meaning given the term in ORS 244.020 (7).

(9) **“Criterion,”** or **“decision criterion”** means a decision standard in this Chapter that is applicable to a disinterment matter which is used by a decision maker to make a determination whether the application to disinter should be permitted or denied.

(10) **“Decision maker”** has the same meaning given the Board.

(11) **“Disinterment permit”** means a permit issued pursuant to the this Chapter.

(12) **“Evidence”** means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the applicant to be relevant to the decision.

(13) **“Ex parte contact”** means contact outside of the formal hearing process between interested parties and a hearing authority or member thereof without notice to, or opportunity to participate in the contact, by any party adversely interested. Ex parte contact does not include contacts between the hearing authority and employees of the hearing authority, including County Counsel.

(14) **“Final decision”** or **“final determination”** means a written resolution memorializ-

ing the final decision made after a hearing on an application filed under this Chapter and which disposes of the matter before the Board.

(15) **“Hearing”**

(a) means a formal proceeding conducted by the Board to determine and make a decision on a disinterment application.

(16) **“Holiday”** includes the legal holidays listed in ORS 187.010 and Saturday.

(17) **“Resolution”** means the written action of the Board granting or denying permission on an application filed under this Chapter.

(18) **“Party,”** in a disinterment proceeding means only those persons defined in LCC 291.036 having a right to control the disposition of remains and who makes an appearance in a proceeding conducted under this Chapter (see **appearance**). The term includes a cemetery authority having possession of the remains and Linn County where the context requires.

(a) **“Permit”** means a resolution issued from the Board following a hearing on the matter bearing permission for the applicant to remove certain disinterred remains from a cemetery pursuant to and consistent with ORS 97.220.

(19) **“Person”** means an individual, including heirs, executors, administrators or assigns; a firm, partnership, association, domestic or foreign corporation, its heirs, successors or assigns; or any political subdivision, agency, board or bureau of the state or federal government; or the authorized agent of any of the above.

(20) **“Presentation of the case”** means the presentation of evidence to support or oppose a proposal or matter.

(21) **“Proceeding”** means hearing.

(22) **“Proposal”** means the requested action as set forth in the application.

(23) **“Quasi-judicial decision”** means a discretionary decision involving the application of specified criteria, including the exercise of policy or legal judgment to a specific individual or property or to a small, identifiable group of individuals or properties.

(24) **“Quasi-judicial hearing”** means a proceeding required by this Chapter to determine

in accordance with this Chapter a particular proposal or matter the final decision of which is a quasi-judicial decision.

(25) “**Record**” means the collection of all information, evidence, and exhibits in writing or recorded in written, audio, or video format and presented to and accepted by the hearing authority at a hearing.

[Adopted 07-680 eff 8/23/07]

### **291.025 Conflict of interest and ex parte contacts**

(A) *Conflict of interest.* No member of the Board may participate in any proceeding or action required by this Chapter except as allowed in ORS Chapter 244.

(B) *Ex parte contact.* No decision or action of the Board shall be invalid due to ex parte contact or bias resulting from ex parte contact with a member of the Board, if the member of the Board receiving the contact:

(1) Places on the record the substance of any written or oral ex parte communications concerning the decision or action; and

(2) Has a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication related.

(C) A communication between county staff, including County Counsel, and the hearing authority shall not be considered an ex parte contact for the purposes of subsection (B) of this section.

(D) Subsection (B) of this section does not apply to ex parte contact with a hearings officer approved under ORS 215.406 (1).

[Adopted 07-680 eff 8/23/07]

### **291.035 County Clerk maintains official record of final decisions made by the Board**

The County Clerk is the office that maintains the written record of Board hearings. All written evidence received by the Board and a tape recording of the hearing, if any, will be maintained by the County Clerk.

[Adopted 07-680 eff 8/23/07]

### **291.036 Persons having the right to control disposition of remains**

(A) The Board may only grant permission to disinter the remains of a deceased person to the following:

(1) An applicant who is the person within the first applicable listed class among the following listed classes that is available at the time of death, if there is no actual notice of a contrary direction by the decedent as described in ORS 97.130(1) or if there is no actual notice of opposition by completion of a written instrument by a member of the same class or a member of a prior class.

- (a) the spouse of the decedent;
- (b) a son or daughter of the decedent 18 years of age or older;
- (c) either parent of the decedent;
- (d) a brother or sister of the decedent 18 years of age or older;
- (e) a guardian of the decedent at the time of death;
- (f) a person in the next degree of kindred to the decedent;
- (g) the personal representative of the estate of the decedent;
- (h) the person nominated as the personal representative of the decedent in the decedent's last will;
- (i) a public health officer.

(B) An applicant who is a person 18 years of age or older to whom a person satisfying the requirements of subsection (A) of this section has delegated such authority by an written instrument conforming to the requirements of ORS 97.130(3) and (7). The person to whom the delegation is made has the same authority as the person delegating the authority

(C) An applicant who is any other person that may have right to control disposition of the remains of the decedent as may be described in ORS 97.130.

[Adopted 07-680 eff 8/23/07]

### **291.040 Application; sworn notary**

(A) The party requesting a disinterment of remains from a cemetery in Linn County must use and properly complete a form provided by Linn County.

(B) The contents of the application at a minimum shall contain the following certified statement:

- (1) the name of the applicant
- (2) that the age of the applicant is at least 18 years of age.
- (3) the name of the person whose remains are requested to be disinterred.
- (4) the relationship of the applicant to the person whose remains are requested to be disinterred.
- (5) the names and mailing and, if possible, the email addresses of all persons known by the applicant to have a right to control disposition of the remains.
- (6) the name of the cemetery authority having right to control disposition of the remains.
- (7) that permission has been sought and denied from the cemetery authority having right to control disposition of the remains.
- (8) that permission has been sought from the appropriate person(s) described in LCC 291.036 who (pursuant to ORS 97.130) has the right to control disposition of the remains the decedent. Such permission from the person(s) with the right to control disposition of the remains must be in writing.
- (9) the purpose for the disinterment.

(C) No application shall be accepted by the Board unless the Board first makes a determination that the application meets the requirements of this Chapter and the application bears on its face proof that the statements contained therein have first been duly, regularly, and validly sworn to by the applicant before a notary public as to the completeness and truthfulness of each and all of the statements contained therein.

[Adopted 07-680 eff 8/23/07]

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## **II. EVIDENTIARY PROCESSES AND HEARINGS**

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### **291.100 Procedures; generally**

(A) The burden of proof in a hearing conducted under this Chapter is on the applicant.

(B) A proposal must be supported by proof that the proposal conforms to:

- (1) the applicable provisions of the Chapter, and
- (2) any applicable, specific decision criteria.

(C) Unless the applicant or the applicant's authorized representative waives appearance in writing with the Board, the applicant or the applicant's authorized representative must appear at a hearing on the application.

(D) The Board may not accept an application that on the face is incomplete.

(E) All documents or evidence relied upon by the applicant shall be submitted to the Board in such a manner and time as to afford the decision maker a reasonably adequate time to review and consider the material and decide the matter.

(F) Irrelevant or repetitive evidence may not be received without the express permission of the hearing authority.

(G) The application and all supporting documentation and record of the proceeding and final resolution is a public record as that term is defined in ORS 192.610 to 192.690.

[Adopted 07-680 eff 8/23/07]

### **291.150 Hearings; disinterments**

(A) Following receipt of an application filed in compliance with this Chapter, the Board shall set a date and time to consider the application.

(B) The Board shall give notice as required in LCC 291.175.

(C) The date of the hearing shall be set in compliance with LCC 291.175(B).

(D) The Board following review and consideration of a disinterment application in a duly and regularly noticed hearing shall either permit or not permit the disinterment by issuing a resolution so finding. The Board shall provide a copy of the

resolution to the applicant and the original shall be filed in the records of the Linn County Clerk.

(E) A hearing may include the following elements:

(1) resolution of any pre-hearing issues requiring resolution prior to the presentation of evidence.

(2) pre-hearing comments made by the chairperson;

(3) opening statements by the parties;

(4) presentation of the case;

(5) presentation of any evidence opposing the matter;

(6) all rebuttals allowed under this Chapter;

(7) closing argument by the parties;

(8) closing comments by the Chairperson.

(F) The decision of the Board on an application filed under this Chapter shall be based on and limited to the information provided by the applicant and any written notice on non-consent in compliance with this Chapter.

(G) The criteria to be used in the decision is limited to:

(1) whether the applicant is in the first class of persons that meets the requirements of LCC 291.036, or a delegate thereof.

(2) whether the application has been properly completed and its contents duly sworn to or affirmed to be complete and accurate.

(3) whether the cemetery authority having a right to dispose of the remains has not granted permission shown by either a written statement or after proper notice has not responded.

(4) whether notice has been given to the persons described in LCC 291.175.

(5) whether none of the persons who may have a right to dispose of the remains superior to the applicant has filed a written notice of non-consent or appeared to object.

(6) the information provided in the application and any testimony or evidence provided at the hearing.

(H) The Board has no duty or responsibility to inquire into the accuracy or completeness of the matters sworn to in the application.

(I) No decision of the Board on the matter shall be made earlier than 60 days before the notices required by LCC 291.175 are given.

[Adopted 07-680 eff 8/23/07]

### **291.175 Notice**

(A) The Board shall provide notice of a disinterment hearing to the following persons:

(1) All persons shown on the application for which mailing and or email addresses have been provided, including the person(s) not consenting.

(2) All persons known by the Board to have or that reasonably may have an interest in the matter.

(3) The cemetery authority having a right to control the disposition of the remains.

(4) Every other person or authority, if any, to whom notice is required to be given by the Board.

(B) The notices required by this section shall be provided by mail or personally at least 60 days prior to the date scheduled for the hearing on the matter.

(C) The Board may publish notice in a newspaper in general circulation in the Linn County having the greatest readership.

(D) The notice shall substantially conform to Appendix 2.

(E) The person(s) giving notices on behalf of the Board shall sign an affidavit of notice prepared by County Counsel providing proof of proper notice. The affidavit(s) shall be made part of the record before the Board.

[Adopted 07-680 eff 8/23/07]

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### **Statutory References and Other Authorities:**

ORS 203; 97, 187, 244; OAR ???

### **Legislative History of Chapter 291:**

Adopted 07-680

Amendments to 07-680

#1 none

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**Appendix 1 — Application for Disinterment  
(Pursuant to LCC 291 - Disinterment Hearing Code)**

COMES NOW, the undersigned and makes application under oath to the Linn County Board of Commissioners for a resolution granting permission to disinter the remains of name, pursuant to Linn County Code 291 (Disinterment Code). This application is supported in part by all the statements certified to hereon. I certify under oath to the Linn County Board of Commissioners:

- (1) That my full name is applicant.
- (2) That I am years of age.
- (3) That the name of the decedent whose remains I apply to disinter is decedent.
- (4) That the decedent is interred in a plot describe plot # & cemetery name in a cemetery in Linn County.
- (5) That I am the relationship of the decedent as permitted by ORS 97.130 and LCC 291.036.
- (6) That I am the person who has the right to control the disposition of the remains of the deceased person, or I have obtained the consent of that person or persons who is/are named in item 8 below.
- (7) That on date(s), I sought permission to disinter the decedent from cemetery authority having authority over the remains of the decedent and the appropriate persons listed LCC 291.036.
- (8) That such cemetery authority denied my request.
- (9) That all persons known to me to that do or may have a right to control the disposition of the remains (as that term is defined in ORS 97.130) of the decedent and their last known mailing and, if possible, email addresses, and whether or not that person consents to the disinterment, are:

<input type="checkbox"/>	_____	_____	_____
	Name	Address	Consents?
<input type="checkbox"/>	_____	_____	_____
	Name	Address	Consents?
<input type="checkbox"/>	_____	_____	_____
	Name	Address	Consents?
<input type="checkbox"/>	_____	_____	_____
	Name	Address	Consents?
<input type="checkbox"/>	_____	_____	_____
	Name	Address	Consents?

*(If more space is needed attach additional sheets or use reverse side)*

- (10) That I have given notice personally or by mail to each of the persons identified in (9) of my intentions to disinter the remains of the decedent identified in (3), and that the notice was given on date(s).

\_\_\_\_\_  
Applicant (print name)

\_\_\_\_\_  
Applicant (signature)

\_\_\_\_\_  
Date

State of OREGON County of Linn	Signed or sworn to (or affirmed) before me on _____ 200_, by _____
Notary Public - State of Oregon	

**Appendix 2 — Notice of Hearing on Disinterment  
(Pursuant to LCC 291 - Disinterment Hearing Code)**

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**NOTICE OF DISINTERMENT**

The Linn County Board of Commissioners has received a request by name, the relationship of name of decedent \_\_\_\_\_, to disinter his/her remains which are presently interred at \_\_\_\_\_ cemetery authority having control of the remains .

Pursuant to LCC 291 (Disinterment Hearing Code) and ORS 97.220, the Board of Commissioners will conduct a public hearing on the matter on date 20  , at time , in Room 200, Linn County Courthouse, Albany, Oregon. Oral and written comments may be presented to the Board of Commissioners at the hearing. The Board will consider whether or not to grant permission to disinter the decedent's remains following the hearing. Approval of the request will require certain findings made pursuant to LCC 291 to include, among other things, the following:

1. That the decedent was a person who had been:
  - a. Interred in a plot.
  - b. In a cemetery in Linn County.
2. That the applicant is eighteen (18) years of age or older.
3. That the applicant is within the first applicable listed class among the following listed classes that is available at the time of death (or has obtained the consent of such person(s) as described in (4)(b):
  - (1) Spouse of the decedent;
  - (2) Son or daughter of the decedent, eighteen (18) years of age or older;
  - (3) Either parent of the decedent;
  - (4) A brother or sister of the decedent, eighteen (18) years of age or older;
  - (5) A guardian of the decedent at the time of death;
  - (6) A person in the next degree of kindred to the decedent;
  - (7) The personal representative of the estate of the decedent;
  - (8) The person nominated the personal representative of the decedent in the decedent's last will; or
  - (9) A public health officer.
  - (10) \_\_\_\_\_
4. That the applicant has sought and was unable to obtain the written instrument containing the consent from:
  - a. The cemetery authority; and
  - b. If the applicant is not a person who has the superior right to control the disposition of the remains, and if there is no actual notice of a contrary direction by the decedent as described under ORS 97.130(1), a member of the same class or a member of a prior class.
5. A qualified applicant may be represented by a delegate 18 years of age or older duly appointed in a writing satisfying ORS 97.130(7).

The Board of Commissioners is personally or by mail hereby giving notice to the cemetery authority, the applicant(s), persons known to be non-consenting persons, and all other persons listed in LCC 291.175. This notice may also be published in the newspaper having general circulation and the greatest readership in Linn County.

No sooner than sixty (60) days after the notices required by LCC 291.175, the Board of Commissioners shall enter a resolution granting or denying permission to disinter the decedent's remains.

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