Chapter 226

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City Parks, Memorials and Cemeteries

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GENERAL PROVISIONS

226.010 Control of municipal corporation over property outside its boundaries. Every incorporated city or municipal corporation owning or controlling any lands without its boundaries may enact any police or penal ordinance necessary to protect the same or preserve the peace and order therein or regulate the use of such park, enforce the ordinance by penalties of fine or imprisonment and make arrests and serve process of courts therein or upon persons therein or thereon in like manner and with like effect as the same might be enacted or enforced within its corporate limits.

PARK COMMISSION IN CITIES OF 3,000 OR MORE

226.110 Definitions for ORS 226.120 to 226.240. As used in ORS 226.120 to 226.240, unless the context requires otherwise:

(1) "City" means incorporated city containing not less than 3,000 inhabitants.

(2) "Board" means board of city park commissioners.

(3) "Commissioner" means city park commissioner.

226.120 Composition and selection of board of park commissioners. The board of park commissioners of the city shall be composed of the mayor and city engineer, if there is one, and if not, the city auditor, together with five citizens thereof, to be appointed by the circuit court in which the city is located. If there is more than one circuit judge in the circuit in which the city is located, the appointment shall be made by all the judges acting together. Not more than three citizens so appointed to the board shall be of the same political party.

226.130 [Repealed by 1983 c.350 §53 (226.131 enacted in lieu of 226.130)]

226.131 Vote required for creation of park commission; conduct of election. The question whether ORS 226.110 to 226.240 shall take effect in a city shall be decided by election as provided in this section. The governing body may submit the question to the electors of the city at an election on a date specified in ORS 221.230. The election shall be conducted under ORS chapters 246 to 260. [1983 c.350 §54 (enacted in lieu of 226.130)]

226.140 Organization of board; compensation. The commissioners shall organize at a meeting thereof, to be called by the mayor not less than 30 nor more than 60 days after appointment of the commissioners is complete. The mayor shall be chairman of the board. Whenever a vacancy occurs in the board appointed under ORS 226.120, the proper judge or judges shall fill the vacancy. Commissioners shall not receive compensation for their services as such.

226.150 Duties of secretary. The board shall appoint a secretary, who shall keep an accurate record of all proceedings of the board, including all rules and regulations adopted for government or use of the parks.

226.160 Duties of treasurer. The city treasurer shall be treasurer of the board. The treasurer shall keep an accurate account of all moneys received and paid out on account of the board apart from all other accounts, and shall pay out no moneys on account of the board, except upon a warrant drawn upon the treasurer by the chairman or acting chairman, countersigned by the secretary or acting secretary, of the board.

226.170 Publication of penalties. The rules and regulations of the board for violation of which penalties are fixed shall be made public, as the board determines.

226.180 Meetings; participation required for business transactions. Regular meetings of the board shall be held on the first Tuesday of each month. Special meetings may be called by the chairman upon application of three members of the board. No business shall be transacted at any meeting of the board without the presence of three or more of the commissioners. No land shall be purchased without concurrence of a majority of the board.

226.190 Prohibition of interest in contracts. No commissioner shall be interested in any contract to which the board of which the commissioner is a member is a party or in which it is interested.

226.200 Taxing power of board. The board, at any of its regular meetings, may assess a tax, not exceeding one-half mill on the dollar in any one year, upon the taxable property of the city of which it is the board. This tax shall be collected like other city taxes and when so collected shall be exclusively under the control of the commissioners, and shall be exclusively used for park purposes according to their judgment.

226.210 General powers of board. (1) The board shall have full and exclusive control of all parks within or connected with its respective city. For that purpose it may:

(a) Lay out and improve such parks.

(b) Appoint all necessary engineers, surveyors and all other employees, including a police force to act in the parks and fix the amount of their compensation.

(c) Do all acts needful and proper for the protection, care or improvement of the parks.

(d) Make all necessary rules or regulations for the use or government of the parks.

(e) Affix penalties for breaches of the rules or regulations made under paragraph (d) of this subsection. These penalties shall not exceed $20 for any one offense and shall be collected as other fines and penalties are collected in the city where such offense is committed.

(f) Acquire title by purchase, gift, devise or otherwise, to any land it deems desirable for parks, the title to be taken in the name of the city.

(2) The board shall disburse all moneys appropriated, given, received or collected for the improvement or use of the parks.

(3) All contracts for the purchase of land for park purposes shall be made by the board.

(4) If the board, being desirous of acquiring any land for any park, cannot agree with the owner as to the amount to be paid therefor, the board may proceed in the circuit court of the county in which the land is situated, as provided in ORS 223.005 to 223.020 for the appropriation of such land for park purposes.

226.220 Vote required for special tax levy. (1) If necessary, the board may provide for payment of land purchases under ORS 226.210 (1)(f) by a special tax, not to exceed one-half mill on the dollar in any one year, on taxable property in the city, to be levied by the board and collected like other city taxes.

(2) Before such tax shall be levied and upon written application of the board, signed by its chairman and secretary and filed with the proper city official in such cases, the city council, in the manner provided in subsection (3) of this section, shall submit the proposition of the special tax levy to electors of the city at an election on a date specified in ORS 221.230.

(3) If the proposition is approved, the special tax shall be levied and collected as provided in ORS 226.200; otherwise the levy shall not be made.

(4) This section does not apply to the ordinary tax for park purposes as provided by ORS 226.200. [Amended by 1983 c.350 §55]

226.230 Dissolution of board and transfer of powers. If the governing body of a city with a park board created under ORS 226.120 decides that the city should abolish the board and transfer its powers, functions and duties, as defined in ORS 226.110 to 226.220, to the governing body of the city, the governing body shall submit the question of the transfer to the electors of the city. The election shall be held on a date specified in ORS 221.230. [Amended by 1983 c.350 §56]

226.240 Transfer of functions on favorable vote. If the electors of the city approve abolition of the park board under ORS 226.230, the park commission shall cease and the offices of park commissioner terminate within 30 days after the returns of the election have been canvassed. Thereafter, all powers, functions and duties of the park commission shall be exercised and performed by the city council or city commission exclusively, to the same extent as if those powers, functions and duties had originally been vested in and exercised by the city council or the city commission. [Amended by 1983 c.350 §57]

PARKS, MEMORIALS AND OTHER PUBLIC GROUNDS IN CITIES OF 5,000 OR MORE

226.310 Definition of "city" for ORS 226.320 to 226.400; public character of use. (1) As used in ORS 226.320 to 226.400, "city" means any incorporated city having 5,000 inhabitants or more.

(2) The taking, using, acquiring and appropriating of private property for any purpose specified in ORS 226.320 to 226.390 is declared to be done for public use.

226.320 Authority to acquire land for certain purposes. Whenever the municipal authorities determine by ordinance to do so, the city may purchase, acquire, take, use, enter upon and appropriate land and property within or without its corporate limits for the purpose of:

(1) Public squares, parks, memorial monuments or buildings, pioneer memorials, pioneer museums, memorials and monuments to United States war veterans, sites or buildings for meeting places for such war veterans, auto campgrounds, playgrounds or comfort stations.

(2) Enlarging any public square, park, auto campground, playground or comfort station.

226.330 Appropriation in excess of needs. The city may purchase, acquire, take, use, enter upon and appropriate land and property in excess of what may be needed for any public squares, parks or playgrounds.

226.340 Terms of appropriation ordinance. (1) In the ordinance providing for an appropriation under ORS 226.330, the municipal authorities shall specify and describe the land authorized to be taken, purchased, acquired, used and appropriated. Such land shall not embrace more than 200 feet beyond the boundary line of the property to be used for the public squares, parks or playgrounds

in order to protect the same by resale of the neighboring property with restrictions whenever the council determines thereon by ordinance.

(2) The council shall declare in the ordinance that the control of the neighboring property within 200 feet of the boundary lines of the public squares, parks or playgrounds is reasonably necessary in order to protect the public squares, parks or playgrounds, their environs, the preservation of the view, appearance, light, air, health or usefulness thereof.

226.350 Sale of excess land; restrictive covenants in deed of resale. After so much land and property referred to in ORS 226.330 as is needed has been appropriated for public squares, parks or playgrounds, the municipal authorities of the city may by ordinance authorize the sale of the remainder of such land or property and impose such restrictions in any deed of resale as may be deemed necessary or proper. The ordinance shall specify correctly and describe the land or property to be sold, and the restrictions in regard to the use thereof. The restrictions shall fully insure the protection of the public squares, parks, or playgrounds, their environs, the preservation of the view and appearance, light, air, health or usefulness thereof, whenever the council shall by ordinance determine thereon and which are to be imposed and inserted in the deed of resale.

226.360 Application of proceeds from sale of excess land. The proceeds from resale of any neighboring property taken in excess of what may be necessary for actual construction, opening, widening, extending and laying out of any public square, park or playground as provided in ORS 226.310 to 226.390 shall be deposited in the city treasury and used in payment of interest and as a sinking fund to retire any bond issues authorized under ORS 226.390. Any surplus arising from such transaction shall be turned over to and for the use of the park department of the city.

226.370 Notice and conduct of sale of excess land. Before selling the neighboring lands or property acquired under ORS 226.320 to 226.360, or any part thereof or any right or interest therein, the municipal authorities of the city shall give a notice of such sale by publication for five successive days in one or more daily newspapers of the city having a general circulation therein and by posting a similar notice in two conspicuous places in or upon the property described and referred to in the notice. The notice shall describe the property to be sold and shall state any restrictions under which the property will be sold and the terms of sale. The notice shall further state that sealed proposals will be received by an officer of the city named in the notice at the office of the officer for such purchase until the day and hour named therein. At the time appointed, such municipal authority shall open the proposals and shall either award to the highest responsible bidder for the purchase of the property; or at their discretion, reject any or all bids, and readvertise in the manner provided in this section.

226.380 Condemnation procedure. When it is intended by the municipal authorities of the city to take, use and appropriate private property for any of the purposes mentioned in ORS 226.320 to 226.340 and the owners and the municipal authorities cannot agree upon compensation and damages arising therefrom, compensation and damages shall be considered, ascertained, determined, awarded and paid in the manner provided by general laws relative to condemnation or by such means as may be prescribed by the city charter for widening, opening, laying out or extending streets, or for acquiring private property for park purposes, at the option of the municipal authorities.

226.390 Financing of projects by bond issues. The municipal authorities may issue bonds for the costs and expenses of acquiring the private property for any of the purposes mentioned in ORS 226.320 to 226.380. The bonds shall be at such rate of interest and for such length of time as the municipal authorities determine, shall be advertised and sold in such manner as the municipal authorities determine and shall be a general obligation of the city. The municipal authorities shall, at the time of issuing the bonds, make provisions for the payment of interest and a sinking fund for the retirement thereof.

226.400 Construction of memorials or veterans' facilities in parks within city limits. The city may permit and authorize the erection and construction of memorial monuments or buildings, or both, pioneer memorials, pioneer museums, memorials and monuments to United States war veterans and/or buildings for meeting places of pioneer associations and/or veterans upon any public park within the limits of the city. Such use of parks is a lawful use of any grounds or premises dedicated as public parks, unless the use thereof for such purposes is forbidden by the terms of the conveyance creating such parks.

MUNICIPAL CEMETERIES

Note: Sections 1 to 4, chapter 528, Oregon Laws 1989, provide:

Sec. 1. The City of Ashland, by and through its city council, is vested with authority to acquire, in the

name of the city, ownership and control of Hargadine Cemetery, located at Lot 10 in the W.C. Meyer's Addition in the City of Ashland, Jackson County. When the city acquires ownership and control of Hargadine Cemetery, the city shall have authority to:

(1) Provide for restoration of the grounds and grave sites;

(2) Provide for the future care and preservation of this cemetery;

(3) Sell unsold lots remaining in this cemetery for cemetery purposes; and

(4) Combine the ownership or management of Hargadine Cemetery with any other cemetery owned and controlled by the City of Ashland. [1989 c.528 §1]

Sec. 2. The City Council of the City of Ashland may acquire Hargadine Cemetery under the provisions of ORS chapter 226, but is not required to make the acquisition under ORS chapter 226 if the city council decides another manner of acquisition is more appropriate. [1989 c.528 §2]

Sec. 3. The City Council of the City of Ashland may appoint a caretaker, who shall serve at the pleasure of the city council. The city council may prescribe the caretaker's duties and fix the caretaker's compensation. [1989 c 528 §3]

Sec. 4. The City Council of the City of Ashland, when providing for the necessary revenue to be raised for city purposes, may include in its annual budget an item for the care and maintenance of Hargadine Cemetery. [1989 c.528 §4]

226.410 Authority to establish cemeteries and crematoria within or without city limits. Any incorporated city may acquire, own, maintain and operate cemeteries and crematoria either inside or outside its corporate limits, in accordance with such plans as the city governing body deems best.

226.420 Acquisition of property of cemetery association. Any incorporated city may acquire, by purchase or gift, any ground or other property belonging to any cemetery association, situate within the corporate limits of the city, for the purpose of owning, controlling or operating such cemetery and the interment of the body of any deceased person therein, or the disinterment and removal to a different cemetery of the body of any person buried therein, or for any other purpose.

226.430 Control by city after conveyance. Whenever any cemetery association transfers to any incorporated city, as provided in ORS 226.420, the ground and property of such cemetery association, from and after such transfer the city shall have exclusive control of such cemetery and all property connected therewith.

226.440 Sale of lots by city. Any incorporated city acquiring incorporated cemetery association property as provided in ORS 226.420, may sell or otherwise dispose of any lots or blocks situate in and being a part of such cemetery in the manner prescribed by the common council of such city.

226.450 Authority to expend funds for maintenance of cemeteries. All cities owning and controlling lands, lots or parcels of ground used for cemetery purposes may expend, for the purpose of beautifying, caring for and keeping up all such lands and premises, such public funds as have been included for that purpose in their annual budget.

226.480 [1953 c.51 §1; repealed by 1981 c.48 §8]

226.490 [1971 c.38 §1; repealed by 1981 c.48 §8]

ABANDONING CEMETERIES

226.510 Abandoned cemeteries declared a menace to public health, safety and welfare; acquisition and removal of such cemeteries declared to be public uses. It hereby is found and declared:

(1) That there exists within municipal corporations of the state, cemeteries which have been abandoned and cemeteries which have deteriorated and become dilapidated and overgrown with weeds, trees, shrubs or other uncontrolled growth.

(2) That such cemeteries, by reason of their unsightly appearance, fire hazard, and by reason of their providing a place of concealment conducive to criminal activities and juvenile delinquency, constitute a menace to the health, safety, morals and welfare of the residents of such municipal corporations; and that these conditions necessitate the use of public funds for crime prevention, fire protection, control of juvenile delinquency, accident protection and other public services and facilities.

(3) That the clearance and removal of such cemeteries are public uses and purposes for which public money may be spent, private property acquired, and are governmental functions of municipal and state concern.

(4) That the varied nature of ownership of cemetery plots, the diverse ownership of land, the difficulty of locating interested persons, the existence of unknown graves and remains and other conditions prevent an orderly removal of such remains and clearance of such cemeteries, and because of such conditions, it is in the public interest that such cemeteries be acquired by municipal corporations by eminent domain or otherwise, for the orderly removal of such remains to other suitable place or places and the discontinuance of such cemeteries and the exercise of the power of eminent domain, and the financing of the acquisition and preparation of land by a municipal corporation for disinterment and reinterment is declared a public use and purpose. [1953 c.298 §1]

226.520 Definitions for ORS 226.510 to 226.630. As used in ORS 226.510 to 226.630, the following words or phrases shall be given the meanings hereinafter set forth:

(1) "Abandoned cemetery" means any cemetery in which no remains of deceased persons have been interred for a period of five years.

(2) "Cemetery" means any tract of land set apart by deed, will or otherwise, for a burial ground, or for the purpose of interring the remains of deceased persons.

(3) "Diligent search." In connection with the provisions of ORS 226.510 to 226.630, a diligent search for the purpose of locating graves, and the location of human remains within a cemetery, shall be such search as shall be reasonably calculated to discover such graves from the existence of monuments, contour of land and terrain, fencing, curbing and other evidences of the location of graves, and in connection with the location of human remains and the determination as to whether or not a given plot contains such remains, it shall be sufficient to employ the method commonly known as probing.

(4) "Municipal corporation." For the purposes of ORS 226.510 to 226.630, a municipal corporation shall mean the governing body of any city incorporated under the laws of this state.

(5) "Remains," for the purpose of ORS 226.510 to 226.630, shall mean the remains of any deceased person.

(6) "Suitable location" means any cemetery, now in existence or hereafter established, including a portion of any cemetery subject to the provisions of ORS 226.510 to 226.630, where provision is made for the perpetual care and upkeep of the graves. [1953 c.298 §2]

226.530 Powers of city to acquire and remove cemeteries to another site. Any municipal corporation, by and through its governing body, in addition to the powers and privileges heretofore conferred upon municipal corporations by the laws of this state, shall for the purposes of ORS 226.530 to 226.630 have the power to:

(1) Acquire cemeteries and cemetery properties, by eminent domain, conveyance or otherwise.

(2) Acquire real property for the purpose of reinterment of remains.

(3) Disinter remains and remove all gravestones, monuments or other evidences of the location or existence of graves, and to move the same to another site.

(4) Sell, lease or convey land acquired under the authority of ORS 226.530 to 226.630, or through voluntary transfers or otherwise. [1953 c.298 §3]

226.540 Public hearing concerning abandoned cemetery. The governing body of any municipal corporation which shall have within the boundaries of such corporation a cemetery which shall have been abandoned, or which shall have become deteriorated and neglected, and so located as to endanger the health, welfare, comfort or safety of the public, may upon petition signed by not less than 10 percent of the electors of the municipal corporation, and filed with the recorder, or similar officer thereof, set a date for public hearing, and give notice thereof by publication, once a week for two successive weeks, prior to the hearing, in a newspaper having general circulation within the county in which the municipal corporation is located, said public hearing to be had within 60 days after the filing of such petition. [1953 c.298 §4]

226.550 Governing body to publish resolution or ordinance upon finding that cemetery should be discontinued. Upon a finding by the governing body of a municipal corporation, after such hearing, that a cemetery located within such corporation is abandoned, or has become deteriorated or dilapidated and overgrown with weeds, trees, shrubs or other uncontrolled growth, and is so located as to endanger the health, welfare, comfort or safety of the public, and that the public welfare requires that such cemetery be discontinued, relocated and cleared, the governing body shall publish its findings by ordinance or resolution. [1953 c.298 §5]

226.560 City may expend public funds for disinterment, removal and reinterment of remains from abandoned cemetery. Upon the adoption of a resolution or ordinance, as provided for by ORS 226.540 and 226.550, the governing body of said municipal corporation may provide for the expenditure of public funds necessary for the disinterment, removal and reinterment of remains and any and all other expenses incident thereto, including, but not limited to, acquisition of property, cost of court proceedings, publications, fees and other incidental expenses incurred in connection with any proceeding under the provisions of ORS 226.510 to 226.630, and may include the same in the next annual budget of such municipal corporation. [1953 c.298 §6]

226.570 Power of city to condemn cemetery. Upon the adoption by the governing body of a municipal corporation of an ordinance or resolution, as provided by ORS 226.540 and 226.550, such governing body shall have the authority, by an action filed in the circuit court of the State of Oregon for the county in which such municipal corporation is located to condemn any cemetery subject to condemnation by the provisions of ORS 226.510 to 226.630. [1953 c.298 §7; 1979 c.284 §124]

226.580 Parties defendant to suit to condemn. The complaint in any suit brought under the provisions of ORS 226.510 to 226.630 shall include as defendants the names of all record owners of lots, or plots located in the cemetery sought to be condemned or any portion or parcel of such cemetery, and the names of the heirs of all record owners as shown by the probate records of the county in which such cemetery is located, and shall include any and all other persons having or claiming any interest of any kind or nature in such cemetery, or any lot or plot thereof, who may be joined as defendants and designated as "all other persons or parties having or claiming any right, title, estate or interest." [1953 c.298 §8]

226.590 Service of summons. The summons in the action shall be served on all named defendants who, by diligent search, can be found, in a like manner as service of summons in a civil action. Service of summons on named defendants who cannot be found may be made by publication as provided in ORCP 7. Service of summons on the defendants included in the complaint as "all other persons or parties having or claiming any right, title, estate or interest" may be made by publication. The manner of making publication in the case of those defendants designated as "all other persons or parties having or claiming any right, title, estate or interest" shall be the same as provided in the order for publication of summons in the case of named defendants, except that no order shall be required. [1953 c.298 §9; 1979 c.284 §125]

226.600 Effect of service by publication on person or parties in interest. All such persons or parties having or claiming any right, title, estate or interest in the real property in controversy, so served by publication as in ORS 226.590 provided, shall have the same rights as provided by law in case of all other defendants upon whom service is made by publication, and the suit shall proceed against such persons in the same manner as against defendants who are named, upon whom service is made by publication, and with like effect; and any such persons or parties who claim any right, title, estate or interest in said real property in controversy, at the time of the commencement of the suit, duly served as aforesaid, shall be found and concluded by the judgment or decree in such suit, and if the same is in favor of the plaintiff therein, as effectually as if the suit was brought against such defendant by his or her name and constructive service obtained. [1953 c.298 §10]

226.610 Compensation for condemned property determined by jury; factors considered. The matter of compensation, if any, shall be determined by a jury called for such purpose; and the court shall, in addition to other instructions, instruct that the jury shall consider the following factors as a benefit and offset:

(1) The cost of a suitable reinterment site.

(2) The cost of preparation of site and its perpetual care and maintenance.

(3) The cost of removal and reinterment of remains.

(4) The cost of such marker or monument as may be placed at the site of reinterment. [1953 c.298 §11]

226.620 City which acquires abandoned cemetery to proceed with disinterment, removal and reinterment of remains. Whenever any municipal corporation shall have proceeded under ORS 226.510 to 226.630, and a decree of the court shall vest in said municipal corporation the title to such cemetery properties, as referred to herein, by eminent domain, such municipal corporation shall proceed with the removal of remains, stones, monuments and any and all evidences of a grave, and provide for reinterment in a suitable location, within a reasonable time after the entry of a final decree, and the expiration of the time for appeal therefrom, or the final disposition of any appeal which may be filed in connection with said decree. [1953 c.298 §12]

226.630 Acts to be done by city in disinterring, removing and reinterring remains; compliance with section a defense in action for damages. (1) The removal of remains, headstones and other evidence of the locations of graves, and the clearance of the cemetery property, may be done under the direct supervision of the governing body of the municipal corporation, or such commission as such governing body may appoint, and such removal, reinterment, clearance and other acts in connection with this program shall be sufficient, if the following specific acts are done:

(a) If all of the remains that can be located within said cemetery, after a reasonable search for such remains, as in ORS 226.520 defined, has been conducted, are removed in a manner reasonably providing for respectful and careful treatment of such remains, and providing for reinterment and recommitment, in a respectful manner.

(b) If the identity of remains is preserved in so far as reasonably practicable, having due regard to the conditions of the cemetery, the condition and location, or dislocation of stones and monuments, and other factors related to the particular project, and, in so far as practicable, the identity shall be shown upon the relocation of said graves in a new

location, by the erection of suitable markers at the location of such graves.

(c) In the event that there are remains in such cemetery which cannot be identified, all of such remains may be interred in a section of the new cemetery site, and the same may be marked by one suitable monument, which shall contain the names of persons, known to have been interred in said cemetery, but whose remains could not be identified.

(2) It shall be a complete defense, in any action brought by any person for damages against the municipal corporation, or other persons or organization affecting such relocation and reinterment, as above described, upon any grounds whatever, to plead and prove a substantial compliance with the provisions of this section. [1953 c.298 §13]

PENALTIES

226.990 Penalties. Violation of ORS 226.190 is punishable, upon conviction, in the same manner and to the same extent as for a crime defined in ORS 164.043, 164.045, 164.055 and 164.057. [Amended by 1971 c.743 §347; 1987 c.907 §14]