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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 17-050

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]**

#### **1. Statutory Authority**

a. In the rule summary’s listing of statutory authority to promulgate the rule, the citation to s. 157.12 (2), Stats., should more precisely cite to par. (a) of that provision. Likewise, the citation to s. 440.905, Stats., should more precisely cite to sub. (2) of that provision.

b. In s. CB 6.01, what standards will be utilized in determining an approved location for a mausoleum? Section 157.12 (2) (a), Stats., requires the Board to promulgate “reasonable requirements governing the **location**, material, and construction of a mausoleum”. It appears that the provision should be revised to establish those standards, rather than simply stating that the location will be reviewed.

#### **2. Form, Style and Placement in Administrative Code**

a. In the rule summary’s listing of statutes interpreted by the proposed rule, the citation to s. 440.905, Stats., should be removed. That section provides the statutory authority to promulgate rules, but does not include any specific cemetery requirements to be administered by the Board.

b. In the rule summary’s explanation of statutory authority, a description of s. 157.62 (5), Stats., should be added.

c. In the rule summary’s discussion on related statutes or rules, the form of the citations should be revised to read: “Sections DSPS 361.30, 361.36 (1) (f), 361.41 (3), and 361.50; s. SPS 362.3100; and chs. 157 and 440, Stats.”.

d. In the rule summary, consider revising the summary of factual data and analytical methodologies to provide an actual description of the methods and considerations. For example, what sources and standards were consulted?

e. In the rule summary's description of the fiscal estimate and economic impact analysis, and the description of the analysis and supporting documents used to determine the effect on small business, the Board states that information is being solicited for a future preparation of the economic impact analysis. However, this information appears to have been provided, as is required by s. 227.137, Stats. The rule summary should be updated to reflect that information.

f. A specific date should be given for the deadline to submit comments on the proposed rule. [s. 1.02 (2) (a) 13., Manual.]

g. In s. CB 2.05 (1) (h), the source notation “, Stats.” should be inserted after the reference to “s. 445.01 (6)”.

h. In s. CB 2.05 (2), the reference to “CB 2.05 (1)” should be revised to “sub. (1)”, as it is an internal citation. [s. 1.07 (2) (Table), Manual.]

i. In s. CB 2.05 (2), the reference to the “effective date of this rule” should be revised to the following format: “the effective date of this section .... [LRB inserts date]”. [s. 1.01 (9) (b), Manual.]

j. Related to SECTION 3 of the proposed rule, the Board should consider the following:

- (1) It appears that the intent is for the definition of “Board” to apply within chs. CB 1 to 6. If so, then the provision should include a statement on the applicability of the definition, such as, “As used in chs. CB 1 to 6,”.
- (2) The phrase that is stricken-through is from the introduction given in s. CB 5.03 (intro.), which applies to subs. (1) and (2). Those subsections are unaffected by the proposed rule, and it appears that the introductory phrase should continue to apply to those provisions.
- (3) As such, the treatment clause and text for SECTION 3 should read: “CB 5.03 (3) is renumbered CB 1.015 and amended to read: CB 1.015 ~~“Board”~~ **Definition. As used in chs. CB 1 to 6, “board” means the cemetery board.**”.

k. SECTION 4 of the proposed rule creates a definition of a term that is only used in ch. CB 6. As such, this definition should be placed in ch. CB 6 rather than in ch. CB 1. Also, a statement on the applicability, “In this chapter,” should be inserted at the beginning of the definition. [s. 1.01 (7) (a), Manual.] Lastly, the source notation “, Stats.” should be inserted after the reference to “s. 157.061 (9)”.

l. Multiple provisions in ch. CB 6 cite specific provisions of statutory authority. However, chs. CB 1 to 4 contain a separate section listing the applicable statutory authority at the beginning of each chapter. The Board should create a separate statutory authority section at the beginning of ch. CB 6 for purposes of clarity and consistency between the form of ch. CB 6 and chs. CB 1 to 4.

m. Multiple provisions in ch. CB 6 cite to other administrative code provisions in SPS chapters. Each of these references should be preceded by the abbreviation “s.”.

n. Sections CB 6.01 and 6.02 provide that mausoleum construction plans are to be reviewed “under” s. SPS 361.30 and ss. 157.12 and 440.92 (2) (e), Stats. How does the Board have authority to review a plan under the authority of s. SPS 361.30, which is a rule promulgated by the Department of Safety and Professional Services (DSPS)? Is it the Board’s intent that DSPS will review the construction plans of all mausoleums? Or that the Board will review the plans using the standards “as described in” the DSPS provisions? Also, how does the Board have authority to review a plan under the authority of s. 440.92 (2) (e), Stats., which is a statute governing the validity of a preneed sales contract?

o. Why is a plan review requirement included in s. CB 6.02, “Mausoleum plan approval”, if plan review is also included in s. CB 6.01, “Mausoleum construction review”?

p. In ch. CB 6, the procedures that are applicable when a building or other structure is converted to a mausoleum should be specified. The proposed rule specifies that a conversion to a mausoleum is subject to the inspection requirement given in s. CB 6.05. However, conversion to a mausoleum is not addressed in any other provision in ch. CB 6.

q. Section CB 6.03 appears to improperly interpret s. SPS 362.3100. The International Building Code (IBC) is incorporated into Wisconsin’s Building Code under s. SPS 361.05 (1); Wisconsin’s Building Code modifies the IBC, as provided in chs. SPS 361 and 362. As such, any reference to IBC ch. 31 should be deleted.

r. Consider inserting an initial applicability provision to specify whether the provisions of ch. CB 6 will apply to mausoleum construction or conversion that has already been initiated or begun on the effective date of the proposed rule. [s. 1.02 (3m), Manual.]

s. The introductory clause that enumerates the rule sections treated by the proposed rule should be updated as needed to reflect any treatment revisions made in accordance with these comments. Also, the abbreviation “ch.” should be inserted both before the reference to “CB 2 (title)” and to “CB 6”.

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. The statutory authority for s. CB 2.05 is given in s. 157.62 (5), Stats. As such, s. CB 2.01 should be amended to include a reference to this statute.

b. In s. CB 6.03, a general reference is made to “In addition to board construction requirements”. To which requirements does this refer? A specific citation should be given.

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In s. CB 2.05, the Board should consider the following:

- (1) The term “cemetery authority” should be defined.
- (2) The burial records listed in s. CB 2.05 (1), are different from the records that a cemetery authority is required to keep and maintain in accordance with s. 157.62 (4), Stats. It may be helpful to indicate this distinction in a note following sub. (1).
- (3) Section 157.62 (5), Stats., states that the Board must promulgate rules establishing minimum time periods for the maintenance of certain cemetery authority records.

Section CB 2.05 does not include a minimum time period, which suggests that the records must be permanently maintained. If that is not the intent, s. CB 2.05 should be revised to designate a minimum time period for those records.

b. It appears that DSPS conducts plan review and approval of all public mausoleums and mausoleums that are 25,000 cubic feet or larger ("large mausoleums"). [See ss. SPS 361.30 (1) (b) and (2) (c) and 362.3100.] Related to ss. CB 6.01 and 6.02, it is unclear how the Board's review and approval process of the construction plans of all mausoleums relate to DSPS's review and approval process of public mausoleums and large mausoleums. For example, should the construction plans for a public mausoleum or large mausoleum first be approved by the Board or by DSPS? May the construction plans be approved simultaneously? What happens to the Board's approval if DSPS does not also approve the plans? What happens to the Board's approval if DSPS issues a conditional approval or revokes its approval? The Board should specify and distinguish its role from DSPS's role in the review and approval of public mausoleum and large mausoleum construction plans.

c. Related to ss. CB 6.01 and 6.02, it is unclear what the Board's review and approval process entails and whether it will be similar or identical to DSPS's review and approval process of public mausoleum and large mausoleum construction plans. For example, what documents, signatures, content, information, etc., must be included in the construction plans submitted to the Board? Must the construction plans be approved by the Board before construction may commence? Does the Board's approval have to be in writing? May the Board provide conditional approval for construction? May the Board revoke its approval for false or misrepresentation of facts on which the approval was based? Are the plans to be open to inspection by the public? What is the time period within which the Board must approve, deny, or modify a submitted plan? May the Board provide an extension of its approval? Sections SPS 361.31 to 361.36 provide answers to these questions with respect to DSPS's review and approval of public mausoleum and large mausoleum construction plans, but these code provisions do not apply to the Board's review and approval process. The Board should review and specify the review and approval process that it intends to use.

d. Related to s. CB 6.03, the Board should consider the following:

- (1) The term "Group S-1 storage occupancy" should be defined.
- (2) Section SPS 362.3100 distinguishes public mausoleums from other mausoleums. However, the first sentence of s. CB 6.03 does not specify how the requirements in Wisconsin's Building Code apply to non-public mausoleums. The Board should review its intent and revise s. CB 6.03 to specify how Wisconsin's Building Code applies to non-public mausoleums.
- (3) The second and third sentences appear to essentially repeat the requirements in the first sentence. To avoid redundancy, it may be helpful to delete the first sentence and instead use a note following s. CB 6.03 to reference the requirements that s. SPS 362.3100 places upon mausoleums and public mausoleums.

e. The content in ss. CB 6.03 and 6.04 appear to be similar and redundant. The Board should consider combining these two sections or clarifying any distinction between them.

f. Section CB 6.04 restates the requirements for the construction of a mausoleum found in s. 157.12 (2) (d), Stats., followed by the phrase, “with construction materials reviewed by the Board ...”. It is unclear what this review entails. For example, when will the Board be reviewing construction materials? How will the Board make its determination regarding the acceptability of the construction materials? What construction materials will the Board find acceptable? Is a mausoleum required to receive Board approval of the construction materials before construction begins? Is this review part of the Board’s review of the construction plans? Also, how does the Board have authority to review materials “under” the authority of s. SPS 361.50, which is a rule promulgated by DSPS? Is it intended that the Board will review the materials using the standards “as described in” the DSPS provision? The Board should review the intent of s. CB 6.04 and revise it to provide a meaningful supplement to the language in s. 157.12 (2) (d), Stats.

g. Related to s. CB 6.05, the Board should consider the following:

- (1) The term “cemetery authority” should be defined.
- (2) This section contains provisions related to the sale of a public mausoleum space under the title “Mausoleum inspections”. It is unclear how the sale of a public mausoleum space relates to mausoleum inspections. Either s. CB 6.05 should be amended to clarify how the sale of public mausoleum space relates to inspections or the sale of a public mausoleum space should be addressed in a separate section. If the former option is chosen, then s. CB 6.05 (title) should be revised to also reference that the section is addressing the sale of a public mausoleum space.
- (3) The phrase, “except as provided in s. 157.12 (2) (b), Stats., public mausoleum spaces may not be sold prior to approval by the Board or its designee”, should be a separate sentence. Also, what is the exception in s. 157.12 (2) (b), Stats.? The Board should consider describing this exception in the rule and not just include it by referencing the statute.
- (4) This section requires inspections by the Board or its designee to inspect a mausoleum and to provide written notification of violations within 30 days after receiving written notice from a cemetery authority that the construction or conversion of a mausoleum has been completed. How does a cemetery authority notify the Board that construction or conversion is completed? Who does the notice go to, the Board or its designee? When does the cemetery authority need to provide this notice? What happens if the Board provides written notification of violations?
- (5) What constitutes a violation? What happens if the Board or its designee finds a violation? Section 157.12 (2) (b), Stats., sets forth requirements as to what must happen if the Board finds minor defects in the construction or conversion of a public mausoleum. Is it the Board’s intent that the procedures in s. 157.12 (2) (b), Stats., would occur? The Board should review its intent with respect to violations and revise accordingly.
- (6) Under s. 157.12 (2) (b), Stats., the Board must inspect public mausoleums and provide the cemetery authority with a written certification; if there are minor defects, the Board may issue a temporary certification of compliance that is

contingent on the correction of those minor defects. Is it the Board's intent to issue certifications and temporary certifications for all mausoleums or just public mausoleums? The Board should review this statute and spell out the certification process in ch. CB 6.

- (7) Is it the Board's intent to charge a "reasonable fee" for each inspection and certification, as authorized under s. 157.12 (2) (b), Stats.? If so, ch. CB 6 should include a fee provision.

h. Related to SECTION 6, which creates a note to s. CB 6.05, the Board should consider the following:

- (1) The note lists the statutory cites for the definitions of various terms that are either not used in the rule or are already defined in the rule. Is it the Board's intent that columbaria, crematory authorities, and public mausoleums are all somehow regulated by ch. CB 6? If not, the purpose of this note is unclear. If so, the definitions should be placed in a rule provision rather than a note, as notes may not contain substantive requirements. [s. 1.09 (1), Manual.] The Board should review its intent as to how columbaria, crematory authorities, and public mausoleums are to be regulated by ch. CB 6, and revise ch. CB 6 accordingly.
- (2) Because SECTION 5 is creating a whole new chapter (ch. CB 6), any note created within that chapter may be done in that SECTION, rather than SECTION 6.
- (3) The format for the citations should be reviewed and corrected to show the source notation ", Stats.," after each reference.