



# Funeral Consumers

---

ALLIANCE

---

Protecting a consumer's right to choose meaningful, dignified, and affordable funerals since 1963

December 17, 2008

**To:** The Bibb County, Georgia, Board of Commissioners

**Re:** Ordinance Amending Chapter 20, "Cemeteries," of the Code of Bibb County

**BY US MAIL AND ELECTRONIC MAIL**

Dear Commissioners,

I write to you from Funeral Consumers Alliance, Inc., the nation's oldest and largest nonprofit organization protecting the rights of funeral consumers and advocating for fair practices and free choice in the funeral and cemetery market. We number approximately 100 chapters around the country, made up largely of volunteers who educate the public on sensible funeral planning, and work with regulators, legislators, and concerned citizens to ensure grieving consumers are not taken advantage of at a devastating time. Since our founding in 1963, we've become the largest repository of factual information on American funeral practices, and we are regarded nationwide as the source for unbiased, pro-consumer information on funeral practices. One of our larger chapters, the Memorial Society of Georgia, has been performing such work in your state since 1973.

FCA asks you to reconsider the ordinance amending Chapter 20 of the Bibb County Code. I'm including a detailed analysis of the Cemetery Ordinance I hope you find helpful.

Sincerely,

Joshua Slocum  
Executive Director

cc: Jim Wood and Beth Collins, Summerland Natural Cemetery  
Joe Sehee, Executive Director, Green Burial Council  
Mark Harris, author of *Grave Matters*  
*The Macon Telegraph*  
*Mortuary Management Magazine*  
Lisa Carlson, Executive Director, Funeral Ethics Organization  
The Institute for Justice  
Philip Shishkin, *The Wall Street Journal*



---

Protecting a consumer's right to choose meaningful, dignified, and affordable funerals since 1963

## **Analysis of Bibb County, Georgia, Ordinance Amending Cemetery Regulations**

Joshua Slocum, Executive Director

Funeral Consumers Alliance, Inc.

December 17, 2008

Bibb County's recent ordinance amending Chapter 20 of the Code of Bibb County Code erects unnecessary roadblocks to new cemeteries that want to offer green burial. Green burial, a time-honored tradition of simple burial without excess containers and chemical embalming, is far older and more traditional than what we incorrectly call "traditional" burial — embalming, metal caskets, and underground vaults.

The analysis below cites specific provisions of the ordinance and discusses where these provisions conflict with state or federal law. This section will also give references to credible, scientific information from a variety of public health organizations, researchers, and health professionals which should correct any unfounded fears of "contamination" or "public health threats" from green burial.

As green burial becomes a more popular choice in America, cemeteries are springing up around the country to offer this service to families. Municipalities in other states are warming to the idea and giving support to the establishment of such burial grounds. Green — or "natural" burial — appeals to many different groups. It comports well with many religious traditions, it appeals to families who wish to make the least impact on the land. It appeals to old-fashioned American values of simplicity, frugality, and self-sufficiency. The only thing new about green burial is the way in which it plays a part in modern concerns about the environment. Simple burial in a shroud, or a simple wood coffin, without embalming or the extraneous concrete vault, is as old as humanity. Our great grandparents would instantly recognize it, and it remains the burial of choice throughout much of the world. As a national nonprofit dedicated to protecting all consumer choices in funeral and burial arrangements, we hope this analysis will convince the Bibb County Board of Commissioners to revise its ordinance.

---

### **§ 20-1 Burials**

*"It shall be unlawful for any undertaker or any other person to bury or cause to be buried . . . any human being in any cemetery or location in the unincorporated area of the county other than an authorized public cemetery or a private cemetery established and approved pursuant to this chapter."*

- This would outlaw private family burial on rural land, a longstanding tradition. What purpose is served by barring families from burying their own on the farm? In most rural areas of the country, from the Northeast to the Deep South, the landscape is dotted with family burial grounds; a charming, private tradition of which many



---

Protecting a consumer's right to choose meaningful, dignified, and affordable funerals since 1963 families are proud. Unless the Commission can articulate a rational public protection served by this provision, it will stand as an unnecessary and inappropriate intrusion into private family and property rights.

### § 20-8 Creation of Nuisances

*“No owner, creator, trust or other legal entity which shall own, supervise or have control of a cemetery shall allow such cemetery to accumulate weeds, trash, junk, filth, or other unsanitary or unsafe conditions so as to create a public health hazard or a general nuisance to those persons residing in the vicinity.”*

- We all agree that beer bottles, trash, and unsightly messes are disturbing, especially in a cemetery. However, by lumping in “weeds,” the Commission has thrown the natural environment out with the trash. We have become used to seeing artificially landscaped, manicured, uniform cemeteries, kept this way by chemicals and a great deal of labor. But green cemeteries seek to preserve the land and its plants in a natural form, both for environmental conservation reasons and so visitors may enjoy the peace and beauty of the virgin landscape. What the ordinance means by “weeds” isn’t even clear. Who gets to decide whether a plant is a weed or a normal species of plant or shrub that has every “natural right” to be there? Further, why does the Commission believe it is **within its purview to decide for families what type of cemetery they’re willing to use to bury their loved ones?** What about those who would prefer a natural setting for a final resting place?
- At the very least, the ordinance should carve out a separate subsection to contemplate natural cemeteries. We hope this will be done in consultation with recognized experts in environmental conservation planning, and not based on arbitrary, personal opinions about what’s “tasteful.”

And finally, what “public health hazard” could possibly arise from allowing natural plants to exist unmolested? The phrase “public health hazard” crops up frequently in the ordinance in the oddest places. FCA knows of no scientific evidence that burial and funeral practices affect the public health: gut feelings or a sense of “ickiness” are no substitute for documented reality.

### § 20-9 (2) Minimum area

*“No cemetery shall be approved unless . . .the cemetery contains not less than two acres to be utilized for burial space.”*

- What purpose is served by requiring a minimum of two acres? What if a private family wants to allot a mere single plot on their farm to bury their grandfather?

### § 20-9 (4) Buffer area

*The proposed [cemetery] location must contain a buffer area that is landscaped with trees and/or shrubbery on all sides of the site that is identified on the survey and is no less than ten feet in width.*



---

Protecting a consumer's right to choose meaningful, dignified, and affordable funerals since 1963

- It's baffling why any cemetery should be shrouded by a ten-foot-thick wall of greenery. This is not a "buffer area" as defined by environmental science; it's a modesty screen. It's an insult to the dead to hide them from the living as if they were a dirty secret. What has led the Commission to believe that the very existence of a burial ground, no matter how attractive, is horrifying to behold? Shall all church cemeteries or other burial grounds now be required to retrofit their grounds with a cloak of *ad hoc* greenery to protect passersby from their existence?
- Requiring such artificial landscaping is in direct contradiction to the ethos of green cemeteries, which seek to leave the land undisturbed and to encourage the peaceful existence of indigenous plants and landscape features.

#### § Additional requirements (a)

*"Fencing shall be installed around the perimeter of the cemetery of sufficient height and strength to keep dogs and wild animals from accessing the cemetery."*

- We wish you all the luck in finding fencing sufficient to prevent animals from entering cemeteries. Should you discover such a system, be sure to share the results with golf courses and zoos.
- We can think of no reason why "wild animals" should be kept from entering a cemetery (if that were even possible). Wild animals, after all, live outdoors. It is their habitat. Does the Commission find birds offensive? Foxes? Chipmunks? Squirrels? Badgers? We suspect this provision was put in based on urban legends of so-called "wild animals" digging up graves. We know of no such instances — does the Commission? Burying a body at least two feet down is sufficient to deter such problems.

#### § Additional requirements (c)

*"All graves must be marked with an appropriate marker as defined herein that will allow law enforcement authorities to locate graves if necessary for any lawful purposes after interment."*

- The Commission has no right to demand that families buy a particular kind of marker, or any marker at all.
- What will the Commission do if a poor family can't afford a marker for a grave? Issue a citation?
- To characterize the requirement to buy a gravestone as a necessity for potential police-initiated exhumations is ridiculous. Are Commissioners worried about people getting buried without proper law enforcement scrutiny in the first place? If Bibb County law enforcement is unable — through the use well-known forensic techniques — to find a grave within the perimeters of a known cemetery, the Commission likely has bigger problems that need to be addressed. This is transparently about the Commission's personal, subjective tastes, an entirely inappropriate basis for public policy.



---

Protecting a consumer's right to choose meaningful, dignified, and affordable funerals since 1963

- It is reasonable and prudent to require cemeteries to keep accurate records of burial. It is not reasonable to shift that burden onto individual families by requiring them to buy a marker they may not want or cannot afford (although we can hear the collective hallelujah from Bibb County's gravestone dealers). If the Commission wishes cemeteries to keep accurate records of burials, it should insert a surveying and record-keeping requirement into the ordinance. Further, it might consider allowing GPS plotting of individual graves to satisfy this requirement — this non-intrusive technology is far more accurate than the sloppy mapping methods most conventional cemeteries employ. It's been used with great accuracy with green burial cemeteries.

### **§20-10 Additional requirements (e)**

*“All human remains shall be buried in a leak-proof casket or vault to protect against contamination of ground water, wells, and aquifers.*

This is problematic on a number of fronts.

- There is no such thing as a “leak-proof” casket or vault. No casket or vault, no matter what material it is made out of, will stay sealed, prevent leakage, or prevent water and dirt entering for any extended period of time. In fact the Federal Trade Commission's Funeral Rule prohibits funeral directors from making such false claims:

#### **FTC 453.3, Misrepresentations, (e) Provision on Preservative or and Protective Value Claims**

In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

... (2) Represent that funeral goods have protective features or will protect the body from gravesite substances, when that is not the case.

And that is most certainly not the case. Any honest cemetery worker will confirm that, on disinterment, it's just as likely that the casket or vault will have rusted, cracked, leaked, or become full of water. This is normal, and no casket or vault can prevent it. Bibb County's ordinance requires funeral directors to violate federal regulations and lie to consumers.

- Georgia law prohibits funeral directors — in two separate places — from misrepresenting the qualities of caskets and vaults:

### **§ 43-18-46. Grounds for denial or revocation of license or registration; other discipline**



# Funeral Consumers

---

ALLIANCE

---

Protecting a consumer's right to choose meaningful, dignified, and affordable funerals since 1963

- (6) The making of a misrepresentation of any kind regarding any funeral merchandise;
- (23) Knowingly making any misleading, deceptive, untrue, or fraudulent representation in the practice of funeral directing or embalming or in any document connected therewith;

The Commission's ordinance requires funeral directors to defy state law by making false claims to consumers, therefore jeopardizing those funeral directors' professional licensure.

- The Commission's ordinance tramples religious rights — Jewish and Muslim burial traditions, as well as those of some Christian sects such as the Amish, require simple burial without metal coffins or vaults that delay the body returning to the earth.
- There is absolutely no evidence that buried dead human remains pose any threat of “contamination” to ground water. Decomposition is nature's way of recycling the body's elements, and humans are not different in death from other animals. Deer, raccoons, and livestock die in the open all the time. None of them are embalmed or placed in caskets or concrete vaults, yet we don't lobby our city councils for mandatory taxidermy for wild animals or livestock. No municipal authorities rush to clean up roadkill to “prevent the spread of disease.” No state law requires the use of a casket or a vault for burial. If leakage from buried bodies were a public health concern, we'd expect at least one state would have laws requiring some sort of containment of corpses underground, yet there are no such laws.

While it's wise to situate cemeteries a reasonable distance away from important aquifers, the natural microorganisms in the soil do a good job of breaking down and filtering the products of decomposition:

*“Although there is some evidence of microbiological contamination in the immediate vicinity of cemeteries, the rapid attenuation of these microorganisms suggests that they pose little risk.”*

— Source: “Infectious disease risks from dead bodies following natural disasters.” Rev Panam Salud Publica. [a publication of the Pan-American Health Organization] 2004, Volume 15, no. 5. Available at:

[http://journal.paho.org/index.php?a\\_ID=441](http://journal.paho.org/index.php?a_ID=441)

- Since “leak-proof” caskets and vaults don't exist, such burials are going on already in Bibb County cemeteries, as they have forever. One of the most common vaults sold by funeral homes and cemeteries is called a “graveliner,” a concrete dome with an open bottom. Since these graveliners are doubtless being used currently in Bibb County, where is the concern from the Commission? It's simply not believable that the Commission is so worried about groundwater quality that it's done nothing to stop the allegedly “contaminating” burial practices going on in established cemeteries.



---

Protecting a consumer's right to choose meaningful, dignified, and affordable funerals since 1963

### §20-10 Additional requirements (g)

*“Remains of persons who die from communicable diseases must be buried by and under the supervision of a licensed funeral director in accordance with the rules and regulations of the State Funeral Service Board.”*

This is the most disturbing and legally overreaching portion of the ordinance. I suspect this provision was inserted with the input of a funeral director. If so, he or she has given you very bad advice indeed:

- Bibb County has no legal authority to abridge the rights of private citizens by forcing them to engage and pay for a funeral director against their will. Governments may only abridge such rights when demonstrable, measurable danger to the public exists, and it certainly does not in the case of private family burial. The Commission incorrectly uses the term “communicable disease” as if it were synonymous with virulent infections such as Ebola or Plague. It is not. Here are some common communicable diseases: influenza (the flu), lice, salmonellosis (food poisoning from fish or poultry), shingles, chickenpox.

Does the Commission believe families should be barred from touching a loved one who had food poisoning? The flu? If so, why does Bibb County allow citizens to keep relatives with such “communicable diseases” at home while they convalesce? The question is obviously absurd, which illustrates the senselessness of telling

private families they have to relinquish their dead because of vaguely defined “communicable diseases.”

- Dead bodies are not, except in exceedingly rare circumstances, a risk to public health. The myth of contagion has been perpetuated for years by the funeral industry without evidence, and contrary to repeated denial by medical science:

*“There is no reason that an unembalmed dead human body should be infectious to anyone attending visitation or public services. Persons transporting and handling bodies or cutting into them may be vulnerable in rare instances, with little or no risk if proper precautions are taken. To refuse to present a body unembalmed because of public health risk is unfounded.”*

— Source: Dr. Lakshmanan Sathyavagiswaran, M.D., Chief Medical Examiner of Los Angeles, as quoted in Mortuary Management magazine, October, 2006.

*“Some ethnic groups require that relatives and religious leaders carry out their own hygienic preparation and rituals. . . It seems unreasonable to restrict such activities unless an obvious hazard exists. The use of gloves and simple protective clothing by the funeral director's staff and anyone else who handles the bodies should be an acceptable and effective safety measure.”*



# Funeral Consumers

---

ALLIANCE

---

Protecting a consumer's right to choose meaningful, dignified, and affordable funerals since 1963

— Source: Communicable Disease Report, a publication of the Public Health Laboratory Service in Britain. Available at [www.hpa.org.uk/CDR/archives/CDRreview/1995/cdrr0595.pdf](http://www.hpa.org.uk/CDR/archives/CDRreview/1995/cdrr0595.pdf)

*“We have not at any point prescribed embalming as a method of protecting public health.”*

— Source: Bernadette Burden, spokeswoman for the Centers for Disease Control and Prevention (CDC) - Atlanta, Georgia, as quoted in Mortuary Management magazine, October, 2006 .

- Georgia state law clearly protects the rights of families to possess and have custody of their dead. Under state law, funeral directors can have their licenses revoked for refusing to release a body:

**§ 43-18-5 (f)**, It shall be unlawful for any funeral establishment, funeral director, or embalmer to refuse to release a dead human body to a legally authorized person upon request of that person, but the release of such body shall not constitute a release of any indebtedness or other claim owed for any services performed on that body by the person or entity releasing that body.

There are no state laws that abridge that right under any circumstances, and Bibb County may not do so locally. In addition, this is another example of the ordinance compelling funeral directors to perform illegal actions that may jeopardize their professional licensure.

## Conclusion

The Bibb County Cemetery Ordinance is ill-conceived, inconsistent, in legal conflict with state and federal laws, and in direct contradiction to all empirical evidence regarding the safety of green burials. It appears to have been written under pressure from fearful parties. Public officials have a duty to examine objective evidence, not merely to give in to unfounded fears. That does not appear to have occurred. It is disturbingly ironic that, in claiming to protect the natural environment, Bibb County did the exact opposite and barred the most benign, simple, and safe form of burial. Funeral Consumers Alliance hopes the Commission will take this opportunity to revise this ordinance rather than waiting for the likely legal challenges.