

ORDINANCE NO. 2019-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING CHAPTER 22, CEMETERIES, OF THE SAN MARCOS CITY CODE BY, AMONG OTHER THINGS, ELIMINATING THE REQUIREMENT FOR PAYMENT OF A PERPETUAL CARE FEE AND DISSOLVING THE PERPETUAL CARE FUND, PROVIDING FOR CEMETERY COMMISSION APPROVAL OF MONUMENTS OVER EIGHT FEET IN HEIGHT, LIMITING PLACEMENTS IN LOTS AND COLUMBARIUM NICHES, AND PROVIDING FOR OTHER MISCELLANEOUS CHANGES; PROVIDING FOR THE REPEAL OF ANY CONFLICTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

SECTION 1. Chapter 22, Cemeteries, of the San Marcos City Code is hereby amended to read as follows (Added text is indicated by underlining. Deleted text is indicated by strikethroughs.):

Sec. 22.001. Definitions.

In this chapter:

Block means a group of multiple contiguous lots.

Caretaker means the person employed by the city or by the city's cemetery maintenance contractor to oversee the operation and maintenance of the cemetery. Unless otherwise stated, the caretaker may delegate his duties and authority under this chapter to an authorized representative.

Cemetery means the San Marcos Cemetery.

Columbarium means a building structure at the cemetery with niches for the placement of funeral urns.

Crypt means an area of the city-owned mausoleum for the interment of one person in a casket, or cremains for up to 12 persons.

Lot means a parcel of property defined as a lot on the official plat maps of the cemetery, intended for the ~~burial of one person~~ interment of up to two persons in caskets or up to six cremains.

Monument means a headstone, gravemarker or similar permanent object of ~~finished~~ stone, or bronze, or concrete that serves as a memorial to a person interred in the lot upon which the monument is located.

Niche means a space in a columbarium intended for the placement of a funeral urn containing the **cremains** of one person **after cremation**.

Section means a group of contiguous multiple blocks.

Sec. 22.002. Reserved.

Sec. 22.003. Rights reserved to city; use of roadways.

(a) Under this chapter, the rights perpetually reserved to the city are the right to:

- (1) Enlarge, reduce, replat or change the boundaries or grading of the cemetery, including changing the locations of or removing or regrading roads, drives or walks.
- (2) Lay, maintain and operate, alter or change pipelines and gutters for sprinkler systems or drainage.
- (3) Use cemetery property, not sold to individual lot owners, for cemetery purposes.
- (4) Ingress and egress over lots for the purposes of maintenance and passage to or from other lots.
- (5) Close any road, walk or drive at any time.
- (6) Designate the location of any flowers, shrubs or trees planted or cultivated on a lot pursuant to Section 22.014(b) of this chapter;

(b) It is unlawful for any person to ride or drive any vehicle in the cemetery except on the improved roads, drives or walkways. This does not prohibit the operation of mowing vehicles used in the maintenance of the cemetery grounds or vehicles necessary to the opening and closing of lots.

Sec. 22.004. Admission.

(a) The cemetery will be open daily for visiting, care of graves and other appropriate uses from 8:00 a.m. to 6:00 p.m. during Central Standard Time, and from 8:00 a.m. to 7:00 p.m. during Central Daylight Savings Time. It is unlawful for any person, other than a city employee or cemetery caretaker on official business, to enter or remain within the cemetery at any time when the cemetery is not open.

(b) It is unlawful for any person to enter the cemetery at any location other than an authorized entrance.

(c) The caretaker will be on duty at the cemetery during normal business

hours from Monday through Friday of each week.

Sec. 22.005. Purchase of lots, ~~or~~ mausoleum crypts, ~~or~~ niches.

(a) All purchasers of cemetery lots, mausoleum crypts, or columbarium niches must select the lots, crypts or niches at the cemetery. Once selected, lots, crypts and niches may be purchased in the finance department. The placement or use of private mausoleums at the cemetery is prohibited.

(b) Upon payment of the entire purchase price ~~plus perpetual care fees~~ for a lot, crypt, or niche, the city will issue a deed which conveys the cemetery lot, crypt, or niche to the purchaser. This deed will be recorded in the deed records of the county by the city and returned to the purchaser. The purchaser must pay the recording costs to the city at the time of final payment.

(c) Each cemetery lot, crypt or niche deed will be issued to only one person. Cemetery lots that have been conveyed by deed may not be subdivided further without the consent of the cemetery commission.

(d) When there are two or more owners of a lot, crypt, or niche, the owners may designate one or more persons to represent the owners regarding the property and file written notice of the designation with the city. In the absence of a notice, the city is authorized to permit an interment in a lot, crypt, or niche at the request or direction of any registered co-owner of the property.

(e) All deeds will grant to the lot, crypt or niche owner the right to use the lot, crypt, or niche for interment of only human remains, subject to the requirements of this chapter.

(f) The price of each cemetery lot, mausoleum crypt, and columbarium niche is established by the city council. ~~In addition, a perpetual care fee will be charged for each lot, crypt, and niche in the cemetery, except lots in the Dixon Addition, Section I. Perpetual care fees are established by the city council.~~

(g) A person desiring to reserve a lot, crypt, or niche at the cemetery may set up an account in the finance department and pay the purchase price over an extended period of time according to the terms set out in this section. However, the city reserves the right to refuse interment in any lot, crypt or niche for which the full purchase price, ~~including perpetual care fees,~~ has not been paid. A deed will not be issued for any lot, crypt, or niche until the full purchase price, ~~including perpetual care fees,~~ has been paid.

(h) A person desiring to pay the purchase price ~~and perpetual care fees~~ over time must enter into an agreement with the city. This agreement will provide that the city will, in a default, refund the entire amount paid by the purchaser, less an administrative fee established by the city council.

Sec. 22.006. Transfer of lots.

(a) The owner of a cemetery lot, crypt or niche may transfer the lot, crypt, or niche only by a written instrument.

(b) The transferee must register the transfer of a cemetery lot, crypt, or niche or interest therein with the county clerk and with the finance department. All transfers are subject to section 22.005. The city may refuse to register a transfer if the purchase price ~~and perpetual care fees~~ for the transferred lot, crypt, or niche ~~have~~ has not been paid in full. In the event a transfer is requested when the purchase price ~~or perpetual care fees have~~ has not been paid in full, the person receiving the property will assume full responsibility for such payment prior to receiving a deed for the property.

Sec. 22.007. Repurchase of lot, crypt, or niche by city.

A cemetery lot, crypt, or niche owner may apply with the finance department to sell the lot, crypt, or niche to the city. The city may, at its option, repurchase a lot, crypt or niche at the price designated by the city council and on file in the city clerk's office.

Sec. 22.008. Use of Dixon Addition, Section I Reserved.

(a) ~~Lots in Dixon Addition, Section I, shall be sold in regular order as shown on the plat on file at the cemetery for an amount established by the city council. Specific lots cannot be reserved in the Dixon Addition, Section I, except that a relative in the immediate family of a person interred in Dixon Addition, Section I, may purchase a vacant lot next to the interred person for an amount established by the city council.~~

(b) ~~In order to qualify for burial in the Dixon Addition, Section I, a deceased person must either:~~

(1) ~~Qualify for county indigent burial services; or~~

(2) ~~Have purchased a lot next to a relative interred in Dixon Addition, Section I.~~

Sec. 22.009. Perpetual care Cemetery maintenance.

(a) The city ~~is the permanent trustee for perpetual care of the mausoleum, columbarium and all parts~~ will provide for the general care and maintenance of the cemetery, ~~except the Dixon Addition, Section I.~~

(b) ~~Every purchaser of a lot, crypt, or niche in the cemetery in all additions except the Dixon Addition, Section I must pay a perpetual care fee in addition to the payment of the price for the lot, crypt, or niche. The fee is established~~

~~by the city council. The cemetery perpetual care fund maintained by the city is dissolved, subject to such funds being reallocated within the city's budget for cemetery purposes.~~

(c) ~~Perpetual Such~~ care ~~and maintenance~~ includes the cutting of the grass at reasonable intervals, the cleaning of the lots and the care and pruning of the trees and shrubs that may be placed along the walks, roadways and boundaries. ~~The grounds shall be reasonably cared for as cemetery grounds forever. Perpetual eCare and maintenance by the city~~ does not include the maintenance, repair or replacement of any gravestones, monuments or memorials; the planting of flowers or ornamental plants; the maintenance or doing of any special or unusual work in the cemetery; or the construction or reconstruction of any damaged marble, granite, bronze or concrete work on any lot.

~~(d) — Any lot not under perpetual care may be placed under perpetual care upon payment of the required fee. General care will be given lots that are not under perpetual care, in order that the general beauty of the cemetery may be maintained. However, the city is not responsible for maintaining these lots in perpetuity. Whenever any lot needs attention, lots having perpetual care will in every case have preference.~~

~~(e) — Any lot not under perpetual care and not located in Dixon Addition, Section I, is subject to permitting fees for work to be performed at the cemetery. These fees are established by the city council.~~

~~(fd)~~ Any activity done by a contractor for the owner or representative of a lot that ~~has not paid the perpetual care fee that is not part of the City's general care and maintenance~~ will ~~be required to obtain~~ a permit. Such permit will require ~~payment of~~ a fee as established by the city council.

Sec. 22.010. Interments.

(a) A completed application for interment in the cemetery must be filed with the finance department ~~by the mortuary that will perform the interment~~ before excavation begins for a burial or before remains are placed in the mausoleum or columbarium.

(b) The applicant must specify the exact location of the burial space to be used. When for any reason an in-ground burial space cannot be opened where specified, the caretaker may direct the burial space to be opened in a location in the cemetery deemed by the caretaker to be best and proper, notifying the mortuary, so as not to delay the funeral.

(c) The mortuary performing interment services must secure the gravesite, must provide for the immediate cleaning of the gravesite and must remove all debris, fill or equipment resulting from or used by the mortuary.

(d) The mortuary performing interment services, for any casketed remains, must use a grave liner made of concrete, metal, poly, or other material approved under State Law, ~~for all interments in cemetery sections for which perpetual care is mandatory.~~

~~(e) The mortuary performing interment services in the mausoleum must use a mausoleum tray.~~

~~(f)~~ (e) The maximum number of burials allowed per lot is:

- (1) two casketed burials (stacked);
- (2) one casketed burial and six cremations; or
- (3) six cremations.

~~(g)~~ (f) The maximum number of placements per columbarium niche is ~~two~~ one cremations.

~~(h)~~ (g) The maximum number of placements in a mausoleum crypt is:

- (1) one casket; or
- (2) twelve cremations.

Sec. 22.011. Disinterments.

(a) Disinterment of a body in the cemetery is permitted only by order of a court of competent jurisdiction or written permission from a person having authority to permit the disinterment.

(b) A mortuary performing a disinterment must secure the gravesite, must provide for the cleaning of the gravesite and must remove all debris, fill or equipment resulting from or used by the mortuary.

Sec. 22.012. Enclosure of lots; maintenance.

(a) It is unlawful for a person to place or construct an enclosure including a fence, coping, hedge or ditch around any lot in the cemetery, except as provided in sections 22.013 and 22.014.

(b) The owner of an enclosure that is damaged to the extent that it is unsightly or hazardous must repair or remove the enclosure within ten days of receipt of written notice from the caretaker, or the caretaker is authorized to remove the enclosure.

Sec. 22.013. Curbing.

(a) The owner of a cemetery lot must apply to the finance department and obtain a permit before installing or constructing curbing of any type within the cemetery.

(b) No curb permit may be issued before the purchase price ~~and perpetual care fees~~ for the lot to be curbed ~~have~~ has been paid in full. No curbing of any type is allowed in the Dixon Addition, Section I, of the cemetery.

(c) Any number of lots may be curbed so long as the purchase price ~~and perpetual care fees~~ for the lots ~~have~~ has been paid.

(d) Curbs must be flush with existing terrain, must be constructed entirely of steel reinforced concrete, marble, or granite and must conform to the following specifications:

(1) *Concrete curbing.*

- a. Curbing will be 18 inches wide along exterior lot lines in the cemetery property; six inches is to be within the lot; 12 inches is to be outside the lot.
- b. Curbing will be six inches wide along interior lot lines and must be placed within the lots being curbed.
- c. Curbing will be four inches deep.
- d. One reinforcing iron size three rebar will be installed along the entire length of the curbing.

(2) *Granite and marble curbing.*

- a. Curbing will be four inches in width and must be placed within the lots being curbed.
- b. Granite or marble used for curbing must be mortared with a bonding agent of the same color as the granite or marble and designed for the purpose of bonding granite to granite, or marble to marble.
- c. Curbing will be six inches deep.

(3) An exception to flush curbing may be granted by the cemetery commission if adjoining lots have raised curbs.

~~(e) — Curb work is prohibited in the cemetery on weekends and on holidays~~

observed by the city and before 8:00 a.m. and after 5:00 p.m. on any weekday.

Sec. 22.014. Decoration of lots, crypts, and niches.

- (a) *Monuments.* Monuments in the cemetery are subject to the following:
 - (1) No memorial, monument, or grave marker, except a temporary marker placed by a funeral home, is allowed on any burial lot until the purchase price ~~and perpetual care fees have~~ has been fully paid and the deed has been delivered to the purchaser.
 - (2) The owner of a cemetery lot or the owner's agent must apply for and obtain a permit from the finance department before erecting a monument, except a temporary marker placed by a funeral home.
 - (3) Persons erecting monuments shall not leave material or rubbish on adjoining lots. Work must be completed as soon as possible and any material or rubbish must be removed at once.
 - (4) Persons erecting monuments are responsible for any damage done by them to any property in the cemetery, including grass and trees. All work is subject to the control and direction of the caretaker.
 - (5) Wooden planks must be used for placing and rolling stone monuments on rocks or grass.
 - (6) Businesses are prohibited from placing their names on any monument or placing signs within the cemetery to advertise the firm or its products.
 - ~~(7) Monument work is prohibited in the cemetery on weekends and on holidays observed by the city and before 8:00 a.m. and after 5:00 p.m. on any weekday.~~
 - (8) Lot owners must locate the placement of monuments at the cemetery before the construction of any foundation. The city is not responsible for the correct location of any monument. Any changes in monument location ordered by the lot owner will be made at the owner's sole expense.
 - (9) All monuments in the Dixon Addition, Section I, must be stone, flat bronze, granite, or concrete.
 - (10) All monuments placed in areas of the cemetery other than Dixon Addition, Section 1, from and after October 1, 2001, must be all granite, marble, bronze, or stone material of permanent nature approved by the San Marcos Cemetery Commission, and must have

a reinforced concrete base. Any monument more than eight feet high is required to have an engineered foundation and be approved by the cemetery commission upon a finding that the proposed monument is suitable for the location based on such factors as safety, interference with maintenance, compatibility with the scale, height, massing and design aesthetic of surrounding monuments, or similar factors deemed relevant by the commission.

- (11) The maintenance of all monuments in the cemetery is the responsibility of the lot owner or the owner's surviving family members or descendants. This maintenance will include, but is not limited to, the following:

- a. The cleaning of the monument;
- b. Ensuring that the monument is seated properly; and
- c. Repairing any damage to the monument or the structure of the monument, including replacement, if necessary.

- (12) In the event that a monument is in need of maintenance, the parks and recreation director will send a letter requesting such repairs to the lot owner, or the owner's surviving family members or descendants, if known, advising of the necessary maintenance. If the lot owner or the owner's surviving family members or descendants cannot be located, then the parks and recreation director will publish a newspaper notice of the necessary maintenance in accordance with the procedures described in V.T.C.A., Estates Code, Chapters 51 and 202. If the necessary maintenance is not performed within the time period stated in the notice, then the city may, in the interests of safety, initiate action to have the necessary maintenance performed, or have the monument removed. The finance director will bill any cost incurred by the city for the maintenance to the lot owner or the owner's surviving family members or descendants, if known.

(b) *Flowers, shrubs, ~~or~~ trees or decorations.* Flowers, shrubs, ~~and~~ trees and decorations in the cemetery are subject to the following:

- (1) Flowers, shrubs or trees may be planted and cultivated on any lot except in the Dixon Addition, Section 1, provided that no planting or removal of shrubs or trees is allowed without first obtaining the written authorization from the caretaker.
- (2) Fresh cut flowers may be placed on any lot, in the mausoleum, or near the columbarium but they must be removed within two weeks or when, in the caretaker's opinion, they become unsightly or detrimental to maintenance. The caretaker may remove flowers not

so removed.

- (3) Artificial flowers, sprays or wreaths are allowed, but they will be removed by the caretaker when they become unsightly or blow off the lot on which they were placed.
- (4) All decorations must be firmly secured or fastened to the ground or monument.
- (5) Glass containers are prohibited.
- (6) Unfilled vases will not be allowed to remain on a lot unless permanently affixed to a monument.
 - a. Unfilled vases will be removed from lots on the first day of the month and held for the lot owner for one month.
 - b. After one month, unclaimed vases will be disposed of at the caretaker's discretion.

(c) In addition to monuments, lots may have benches of marble, granite, concrete, or material approved by the cemetery commission. Any other structural amenities, which must also be primarily of marble or granite, must have the approval of the cemetery commission before being placed on the lot.

(d) Unapproved items will be removed by the caretaker and disposed of at the caretaker's discretion. Weathered and unsightly items will be removed during the spring and fall cleanup.

(e) The caretaker is authorized to enforce the provisions of this section.

Sec. 22.015. Miscellaneous Prohibitions; penalty for violations.

(a) In addition to any other prohibited or unlawful conduct set forth in this chapter, entry into and use of the cemetery shall be subject to the restrictions in this section.

- (1) The consumption or open display of alcoholic beverages is prohibited.
- (2) Loitering, loud music, excessive vehicle noise or other behavior that disrupts the peace is prohibited.
- (3) All pets must be on leash or otherwise restrained in accordance with applicable ordinances.
- (4) Smoking of cigarettes, including e-cigarettes that create a vapor in

any manor or any form, is prohibited.

- (5) Water is for landscape irrigation use only. Watering is allowed only by hand-held hose or by sprinkler connected to a hose while the person that connected the sprinkler is present and only on the days and times designated in the approved irrigation conservation plan for the cemetery. No other temporary or permanent irrigation systems or connections shall be allowed.
- (6) Vehicles may only be parked on paved streets or drive aisles. No vehicles are allowed in the cemetery except during cemetery hours. Vehicles parked in violation of this subsection may be towed at the owner's expense.

(7) Visitors to the cemetery shall comply with all applicable laws.

(b) A violation of this section is a Class C misdemeanor, punishable by a fine as provided in section 1.05 of the San Marcos City Code.

SECTION 2. In codifying the changes authorized by this ordinance, paragraphs, sections and subsections may be renumbered and reformatted as appropriate consistent with the numbering and formatting of the San Marcos City Code.

SECTION 3. If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

SECTION 4. All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

SECTION 5. This ordinance will take effect after its passage, approval and adoption on second reading.

PASSED AND APPROVED on first reading on _____, 2019.

PASSED, APPROVED AND ADOPTED on second reading on _____, 2019.

Jane Hughson
Mayor

Attest:

Jamie Lee Case
City Clerk

Approved:

Michael J. Cosentino
City Attorney