

**ORDINANCE NO. 2008-08**

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF BOERNE, TEXAS, BY REPEALING AND REPLACING CHAPTER 6, CEMETERY; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR PENALTIES NOT TO EXCEED \$200**

WHEREAS, from time to time, it becomes necessary to amend or repeal and replace certain ordinances in the best interest of the citizens;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOERNE, TEXAS:**

The Code of Ordinances, City of Boerne, Texas, is hereby amended by repealing and replacing Chapter 6, Cemetery as follows:

**ARTICLE I     IN GENERAL**

**Section 6-1: General Provisions**

- a. By approval of the Boerne City Council the Boerne Cemetery is operated as a perpetual care cemetery, which means that a perpetual care fund for its maintenance has been established in conformity with the laws of the State of Texas. Therefore, the rules outlined within this ordinance were established to allow for diverse memorialization for the life of loved ones while at the same time taking into consideration safety and maintenance issues.
- b. The Boerne Cemetery is set apart for the burial of human remains subject to the rules established in this ordinance, the City of Boerne Code of Ordinances, and any applicable federal or state laws.
- c. All spaces and niches in the cemetery owned by the City of Boerne are conveyed to the purchaser by Cemetery Deed for Cemetery lot sales, and by a Certificate of Ownership for niche sales, for the purpose of burial only. The rights of the purchaser therein are subject to such rules and ordinances as may be enacted or amended, from time to time, by the City Council of the City of Boerne.
- d. The rules and regulations herein contained are designed for the protection of the rights of all Cemetery space owners. The rules adopted have been determined to be reasonably necessary and incidental to achieve the aforestated objectives.

**Section 6-2: Administration**

- a. All matters pertaining to the Cemetery in the City of Boerne, Texas, shall be under jurisdiction of the City Council of the City of Boerne, Texas and no person shall have the right to transact any business pertaining to the cemetery unless duly authorized, in writing, by the City Council.
- b. All administrative matters pertaining to the daily operation of the Cemetery shall be under the direction of the City Manager or his designee.

**Section 6-3: Records**

- a. Records giving full data on all interments shall be kept in the City files, and shall be open to authorized persons. The data is to include the section, block, and grave/lot location; and the name and date of interment.

## **ARTICLE II REGULATIONS**

### **Section 6-26: Cemetery Hours of Operation**

All work performed in the Cemetery by any firm, partnership, corporation contractor, or any other entity not connected with the city shall be conducted and performed during the hours of 7:00 A.M. and 4:00 P.M. Monday through Friday.

### **Section 6-27: Interment and Inurnment**

Application for interring a body or inurning the cremated remains of a body shall be made to a City appointed Cemetery Sexton. A permit for such interment will be issued if proper certificates, as required by state law, have been provided. The Cemetery Sexton must provide to the City of Boerne, in writing, all burial information including the name of deceased, name of purchaser, exact location of the lot, or niche, on or in which the remains are to be interred, burial details, payment information, and if available, next of kin information.

- a. Interment
  - i. Any interment in the Cemetery of the city requiring a three (3) foot long or longer casket shall be made in a concrete box or a non-biodegradable casket.
  - ii. Not more than two (2) bodies may be interred in one (1) grave space.
  - iii. Cremated remains of one or more bodies may be buried in a grave space.
- b. Inurnment
  - i. Only one human remain may be interred in a niche in the Boerne Cemetery Urn Garden.

### **Section 6-28: Disinterments, Grave and Niche Openings**

- a. Disinterment shall only be made under the direction of the Cemetery Sexton, in conformity with state laws, and advanced written notice has been sent to the City of Boerne. Graves and niches shall be opened by authority of the City Manager or his designee.
- b. All fees associated with disinterment of grave and niche openings shall be paid in advance to the Cemetery Sexton.

### **Section 6-29: Boundary and Grade of Lots**

- a. All boundary markers set by the City must remain undisturbed.
- b. The grade of lots, once established, shall not be changed without the consent of the City.

### **Section 6-30: Planting and Other Decorations in the Cemetery**

- a. The City is not responsible for any funeral design, floral piece, or other article or thing placed on any lot or grave in the Cemetery or in the Urn Garden.
- b. The City prohibits enclosures of any kind, glass and ceramic jars/vases, glass and ceramic decorations, awnings or other articles that may be considered objectionable by City officials, and the City staff has the right to remove such items.
- c. Benches, chairs and settees are allowed but must be in alignment with the headstone should space be available on the lot, or at the foot of the grave parallel to the headstone. All benches, chairs, or settees must be placed upon a

solid concrete slab approved by the City. Benches, chairs and settees must not encroach upon lots not of the same ownership without written permission of the effected lot owner.

- d. Receptacles for flowers, which must be of metal, plastic, stone, or part of the monument itself and must be of such character as not to interfere with mowing or appear unsightly when not filled with flowers. All receptacles for flowers must be placed on or immediately next to the monument or if there is no monument, at the head of the grave. Multiple containers are allowed unless they interfere with mowing and maintenance of the grounds.
- e. Following a funeral, persons desiring to retain flowers, plants, containers, wire racks or other similar objects, shall pick them up within seventy-two (72) hours after the burial service.
- f. Any natural flowers left on a grave may be removed by the city after one (1) week, and artificial flowers may be removed after a period of two (2) months, and must meet the criteria outlined in 6-30, d.
- g. Following an interment in the Urn Garden one flower arrangement or memorial may be left at the site of the niche in which the interment occurred for duration not to exceed 72 hours at which time the flower arrangement or memorial must be removed. Any flower arrangement or memorial left after 72 hours will be removed by City staff. At no time will any items be allowed to remain in the Urn Garden on a permanent or semi-permanent basis.
- h. Lot owners will be permitted to plant trees or shrubs in multiple lot sections containing four (4) spaces or more, provided the section is under one (1) ownership. Such trees or shrubs shall be specimens chosen from the approved list of plants suitable for the climate, terrain and soil conditions of this area compiled by City staff. Trees and shrubs shall be planted so that roots and branches do not become unsightly or become a hindrance to the appearance of, or access to, adjacent lots and avenues. City staff shall have the right to enter such multiple lot sections to remove or trim trees or shrubs or parts thereof which have been determined to be unsightly or a hindrance.
- i. If any tree or shrubs situated on a Cemetery lot, by means of their roots or branches become detrimental to the adjacent lots or avenues, or become unsightly or inconvenient for visitors, it is the duty of the City officials to remove the hazard. City staff has the right to remove any trees or shrubs that may be infected by disease. No tree may be cut or trimmed by an individual without the approval of a City official.
- j. The City shall have full right to fill and level graves and plant grass thereon.
- k. The City has the right to clean, mow and trim all areas of the Cemetery. The City may allow the private care of a lot or lots provided said care is at the same or superior level as provided by the City.
- l. Flags are allowed as long as they are not deemed obscene or objectionable by the City Manager, or his designee. Any such flags may be removed by City staff upon notification by the City Manager, or his designee. Flag poles cannot exceed six feet in height. Flag poles must be located next to the headstone and out of the mowing pathways. Flags that have become torn, frayed, unsightly or deteriorated may be removed by City staff.

**Section 6-31: Copings, Hedges, Fences, Etc.**

- a. The City prohibits the installation of curbing, slabs (other than for bench foundations or foot markers), tombs, walks, fencing, hedging or enclosures of any kind. Grave sites that have such items prior to this ordinance will be

allowed however, the City may remove damaged, deteriorated, unsightly, covered or partially covered curbing, slabs, walk, fencing or curbs, if it so desires. City staff has the right to remove such items installed as of the date of this ordinance.

- b. Gravesites or lots, as of the date of the approval of this ordinance, that have fencing, hedging, curbing, or enclosures will be allowed but must be maintained by the owner, appointed caretaker, or family member of said lot for the purposes of mowing, weeding, and general maintenance. City staff has the right to remove such fencing, hedging, curbing, or enclosures if the owner, appointed caretaker, or family member(s) do not maintain the lot at the same level as provided by the City on other lots.
- c. As of the date of this ordinance, the use of tiles, bricks, gravel, crushed rock, oyster shells or other material on any lot in the Cemetery is strictly forbidden (safety purposes).

### **Section 6-32: Monuments, Headstones, and Markers**

- a. Monuments shall mean those markers placed on the head line of a space or spaces. Foot markers shall mean markers placed on the foot line of the space.
- b. Foot markers shall be set on the foot line of the space, and shall not exceed forty-eight (48") inches in length nor sixteen (16") inches in width. Flat foot markers shall be set flush with the ground.
- c. The City may straighten, reset or mend monuments, foot markers, jardinières or other items as required, but it is the primary responsibility of the property owner or their next of kin to maintain said items.
- d. The City may clean, to the best of its ability, headstones or monuments, as required. The city may make an effort to contact the next of kin to inform them of the city's proposed improvements prior to commencing any restoration work.
- e. Any person, organization, or commercial establishment must obtain a monument permit from the proper cemetery official before erecting a monument. Only one (1) monument per grave space will be allowed. If a base is included, it must be of solid concrete or slab material minimum of four inches (4"), and flush with ground level or have a minimum of four (4") inches above ground level.
- f. No monument or markers may be set in place and no inscribing of monuments or markers already in place may be done unless the written permission of the lot owner or their representative has been verified to the satisfaction of the Cemetery official.
- g. Ornaments or vases incorporated into a monument must be affixed to the monument or marker and shall not extend beyond the maximum dimensions allowed for the monument.

### **Section 6-33: Vehicles**

- a. No person shall operate or cause to operate any vehicle within the Cemetery except on roads designated for that purpose, and no vehicle shall be driven at a speed in excess of five (5) miles per hour upon any road within the cemetery.
- b. Vehicles must not turn around in the avenues.
- c. Visitors shall use driveways only and shall not drive across other lots or graves to gain access to a grave or lot.

### **Section 6-34: Vandalism and Theft**

The City shall not be responsible for acts of vandalism or theft of memorials or personal property.

### **Section 6-35: Ordinance Violations and Rule Infraction Procedures**

- a. Any person, organization or commercial establishment not complying with the terms and provisions of this ordinance shall be guilty of a misdemeanor. Every day in which a violation exists shall constitute a separate violation and separate offense and may result in a fine not less than \$10.00 or more than \$200.00.
- b. When City staff determines that there has been an infraction of the rules as stated in this ordinance, the procedures listed below shall be followed:
  - i. Record and document infractions of the ordinance.
  - ii. Notify space owner by mail of the infraction along with options available for correction by regular mail.
  - iii. Allow fourteen (14) days from the date the notice was mailed to the space owner to comply, or appeal to the City Manager or his designee.
  - iv. Corrective action will be taken by the City of items that constitute the infraction at owner's expense, and / or issue fines.

## **ARTICLE III CHARGES**

### **Section 6-61: Purchase Options**

- a. The City Council may appoint one or more representatives (Sextons) to sell cemetery spaces and niches.
- b. The sale of a space or niche is not valid until full payment has been received and a Cemetery Deed (for Cemetery lot sales) and / or a Certificate of Ownership (for niche sales) has been issued by the City of Boerne to the purchaser.
- c. Once a Cemetery Deed has been approved by the Mayor and issued by the City of Boerne to the purchaser, it may then be recorded in the deed records of the County.
- d. The price of all spaces and niches shall be established by ordinance of the City Council, and amended as necessary. The price of spaces and niches are established in the current fee schedule available in the office of the City Secretary, or by contacting the City appointed Cemetery Sexton.
- e. All fees due for opening and closing costs associated with a burial are established by the Cemetery Sexton and paid directly to the same.
- f. The fee to be paid to the Cemetery Sexton shall be ten (10) percent of the cost of each space or block, or niche sold by the Sexton.

### **Section 6-62: Resale Options**

A space or niche may be sold or transferred by the original owner to another person, however, the sale, transfer or assignment of any space or niche in the City Cemetery by any owner or purchaser shall not be binding upon the City until:

- a. The sale or transfer is recorded with the City of Boerne and a new Cemetery Deed (for Cemetery lot sales) or by a Certificate of Ownership (for niche sales) is issued by the City of Boerne to the purchaser; and
- b. A fee of twenty five dollars (\$25.00) is paid to the City of Boerne for the recording of such sale or transfer.

#### **ARTICLE IV CARE AND UPKEEP FUND**

##### **Section 6-86: Permanent Endowment Fund**

- a. There is created by this article a permanent endowment fund for the future care and upkeep of the Cemetery to include lots and graves, and the columbarium in the City Cemetery.
- b. The City is willing and intends to act as, and is designated, permanent trustee of the fund hereby created.
- c. At such time as sufficient funds are collected, the City may at its discretion as trustee of the fund, convert the fund to a perpetual care fund.
- d. The contribution to the fund provided for in this article shall be as set out in the current fee schedule available in the office of the city secretary or through the Cemetery Sexton.

##### **Section 6-87: Investment Of Funds: Application Of Income**

- a. The City shall have the right, power and authority to invest and reinvest all funds in interest bearing securities allowed by City's investment policy. At no time shall the original contributions be used by the city, except incase of an emergency situation. At such time the original contribution may be used only with the affirmative vote of three-fourths (3/4) of all members of the City Council.
- b. The net income from the fund may be used only for the maintenance, care, upkeep and the purchase of equipment and materials for the cemetery to perform these functions in an efficient manner.

#### **SEVERABILITY**

If any portion of this ordinance or any section or subdivision thereof be declared unconstitutional or in violation of the general laws of the state, such declaration shall not affect the remainder of this ordinance which shall remain in full force and effect.

PASSED and APPROVED on first reading this the 22<sup>nd</sup> day of April, 2008.

PASSED, APPROVED and ADOPTED on second reading this the 13<sup>th</sup> day of May, 2008.

APPROVED:

\_\_\_\_\_  
MAYOR

ATTEST:

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CITY SECRETARY