

ORDINANCE NO. 20-12

AN ORDINANCE OF THE CITY OF BRECKENRIDGE, TEXAS ADDING CHAPTER 16, CEMETERY, TO THE BRECKENRIDGE CODE OF ORDINANCES; ADOPTING RULES REGARDING THE BRECKENRIDGE CEMETERY; PROVIDING A PENALTY CLAUSE; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Breckenridge (the "City") is the owner of the Breckenridge Cemetery, which is operated by the City as a perpetual care cemetery;

WHEREAS, the City Commission of the City of Breckenridge (the "City Commission") has previously regulated the sale of lots and the appearance of the cemetery by regulations;

WHEREAS, the City has obtained a columbarium to hold cremated remains; and

WHEREAS, the City Commission finds it necessary to update its cemetery regulations to include the new columbarium and has determined that the regulations should be adopted as an ordinance to aid in enforcement of the regulations;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BRECKENRIDGE, TEXAS THAT:

I. Enactment. This Ordinance No. 20-11 shall be known as the "Cemetery Ordinance of the City of Breckenridge" and shall be codified as Chapter 16 of the Breckenridge Code of Ordinances.

CHAPTER 16 – CEMETERY

Article I. In General

Sec. 16-1. Perpetual Care

(a) The Breckenridge Cemetery is operated pursuant to Chapter 712 of the Texas Health and Safety Code.

(b) The City agrees and covenants on behalf of the lot purchasers of said Breckenridge Cemetery, that it shall and will set aside the amount per square foot as required by state law of the cash received on each and every lot sold by it within thirty days from the final payment and at the time the conveyance is issued, to constitute what shall be known as the Perpetual Care Fund, and shall designate some bank or trust company authorized to handle such funds as the deposit and trustee of said fund thus created, which shall be held forever intact and shall be invested by said trustee in such manner and in such securities as provided by said act of the Legislature and/or any subsequent changes or amendments to said act of the Legislature and said act now provides that said funds may be invested in bonds of the United States or the State of Texas, or of any county, city or other political subdivision of the State of Texas, or on first mortgages or on improved real estate, or in bonds legal for investments, savings banks or trust companies in this State. And the income therefrom paid to said City, which shall be used by it toward the uniform maintenance, care, repair and cleaning of lots and

graves sold by it of said Breckenridge Cemetery, including private driveways, fences, planting, building parkways and all other property belonging to it in said Breckenridge Cemetery.

(c) Said perpetual care fund shall be kept forever intact and no part of it expended in any manner, but it is to be kept invested as required herein.

(d) No salaries except reasonable salaries rendered shall be paid out of the income of said fund. However, this does not prevent the payment of reasonable and just compensation of the active officers or employees necessary to carry on the operation and maintenance of said cemetery or fees absolutely necessary for the service of a suitable trustee.

(e) The City reserves the right to change the bank depository and trustee upon thirty days' notice, if it appears that a trustee can satisfactorily handle the Perpetual Care Fund and safely comply with the terms hereunder for any just reason as seems fit, and any bank desiring that its service shall cease may be relieved if and when a trustee, as required hereunder to act, is appointed, and all monies, securities, funds and other assets of the Perpetual Care Fund shall have been turned over to the succeeding trustee, or trustees, which must be done in either instance recited in this paragraph.

(f) Said City reserves to itself the right to charge against the income from the Perpetual Care Fund any money it spends for the superintending, maintenance, repair, etc., in the cemetery.

Sec. 16-2. General Provisions

(a) The Breckenridge Cemetery contains grave spaces in the ground and niches in a columbarium. All spaces and niches owned by the City are subject to purchase, which shall be memorialized by either a Cemetery Deed for grave spaces or a Certificate of Ownership for niche sales. The City reserves the right to refuse to sell a grave space or niche to any particular person or entity.

(b) The Breckenridge Cemetery contains two sections – the upright section and the flat section. The upright section allows for placement of upright monuments on grave spaces. The flat section allows only markers that are flush with the ground.

(c) All spaces and niches shall be used for the interment of human remains only.

(d) The owner of spaces and niches in the Breckenridge Cemetery shall have the right to use the cemetery pursuant to the rules and regulations contained in this Chapter.

(e) The rules and regulations contained in this Chapter are intended to allow for diverse memorialization of the lives of loved ones while also promoting safety of visitors and City staff and allowing for efficient maintenance by the City.

Sec. 16-3. Administration

All matters pertaining to the Breckenridge Cemetery are under the jurisdiction of the City Commission. All administrative matters pertaining to the daily operation of the Cemetery are conducted under the director of the City Manager. No person shall have the right to transact any business pertaining to the cemetery unless duly authorized, in writing, by the City Commission or City Manager. Records regarding all interments in the Breckenridge Cemetery shall be kept at City Hall.

Sec. 16-4. Violation; Penalty

(a) If any grave site or niche is found to be in violation of this Chapter, the City may remove and discard the subject of the violation without liability.

(b) Any person or entity who violates or fails to comply with any provision of this Chapter shall be charged with a Class C misdemeanor and, if convicted, shall be subject to a fine of up to Five Hundred Dollars (\$500.00). Each day a violation exists or continues shall constitute a separate offense.

Sec. 16-5. Definitions

The following words and terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Cemetery means a place that is used or intended to be used for interment, and includes a graveyard, burial park, mausoleum, or any other area containing one or more graves.

City Manager means the City Manager of the City of Breckenridge or his or her designee.

Columbarium means a durable, fireproof structure, or a room or other space in a durable, fireproof structure, containing niches and used or intended to be used to contain cremated remains.

Decedent means a human who has died.

Disinterment means to exhume, unbury, or take out of the grave.

Flower arrangement means a decorative display of either natural cut flowers or artificial flowers.

Flower saddle means a flower arrangement that is attached to a upright headstone by a wire frame. Also called "headstone saddle" and "cemetery saddle".

Funeral establishment means a place of business used in the care and preparation for interment or transportation of human remains, or any place where one or more persons are engaged or represent themselves to be engaged in the business of embalming or funeral directing.

Grave means a space of ground that is used or intended to be used for interment of human remains in the ground.

Interment means the permanent disposition of remains by burial or placement in a niche.

Memorial means a headstone, tombstone, gravestone, monument, or other marker denoting a grave.

Niche means a space in a columbarium used or intended to be used for the placement of cremated remains in an urn or other container.

Plot means space in a cemetery that is used or intended to be used for interment in the ground.

Plot owner means a person in whose name a plot is listed in the City's offices as the owner of the exclusive right of interment or who holds a certificate of ownership or other instrument of conveyance of the exclusive right to interment in a particular plot in the Breckenridge Cemetery.

Remains mean the body of a decedent or the cremated remains of a decedent.

Shepherd's book means a long metal pole which is curved over at the top for holding hanging baskets.

Sec. 16-6. Relevant State Law

State laws which may be enforced at Breckenridge Cemetery include, but are not limited to:

- (a) Abuse of Corpse. Section 42.08 of the Texas Penal Code says that the vandalizing, damaging, or treating in an offensive manner the space in which remains have been interred or otherwise permanently laid to rest is a Class A misdemeanor.
- (b) Criminal Mischief. Section 28.03 of the Texas Penal Code says that the damage or destruction of property involving human burial is a state jail felony.
- (c) Graffiti. Section 28.08 of the Texas Penal Code says that the intentional or knowing creation of markings on property of another which is located in a place of human burial with paint, an indelible marker, or an etching or engraving device is a state jail felony.

Secs. 16-7—16-9. Reserved

Article II. Sale of Spaces and Niches

Sec. 16-10. Cost

The City Commission shall establish the price of all plots and niches in the Fee Schedule Ordinance. The current fee schedule is available in the office of the City Secretary.

Sec. 16-11. Sale Procedures

- (a) Payment. A person wishing to purchase a plot or niche may pay the cost in full or may enter into a sales contract with the City to purchase a plot or niche.
- (b) Plot Sales. Upon receipt of full payment, the City will issue a Cemetery Deed to the purchaser. The Cemetery Deed will be recorded in the Deed Records of Stephens County, Texas prior to being delivered to the purchaser.
- (c) Niche Sales. Upon receipt of full payment, the City will issue a Certificate of Ownership to the purchaser.
- (d) The sale of a space or niche is not valid until either a Cemetery Deed or a Certificate of Ownership has been delivered to the purchaser.

Sec. 16-12. Resale Procedures

An original owner wishing to sell or transfer a plot or niche to another person must file documents memorializing the sale or transfer with the City and pay a transfer fee, as established by the City Commission in the Fee Schedule Ordinance. The City shall then issue a new Cemetery Deed or Certificate of Ownership to the purchaser.

Secs. 6-13—6-19. Reserved

Article III. Use of the Cemetery

Sec. 16-20. Hours of Operation

- (a) The gates of the cemetery will open at 8:00 a.m. and close at sundown, and no one will be allowed within the grounds before opening or after closing.
- (b) All work performed in the cemetery, by anyone other than the City, may only be conducted between 8:00 a.m. and 5:00 p.m. on Monday through Friday.

Sec. 16-21. Vehicles

- (a) No person shall operate or cause to operate any vehicle within the cemetery except on roads designated for that purpose. No person shall operate or cause to operate any vehicle at a speed greater than ten (10) miles per hour while within the cemetery.
- (b) Vehicles shall be driven only on driveways and not across lots or graves to gain access to a grave or lot. Vehicles may not turn around in the avenues.
- (c) Commercial vehicles are prohibited, unless used for the delivery of materials for construction and development within the grounds.

Sec. 16-22. Rules of Conduct

- (a) Visitors must keep on the walkways and not trespass on any grave.
- (b) No person shall possess or consume alcoholic beverages or illegal drugs within the cemetery.
- (c) Children must be accompanied by an adult.
- (d) Firearms are prohibited.
- (e) No dogs or other animals, except service animals, shall be permitted in the cemetery.
- (f) No advertisement of any form shall be allowed or conducted within the cemetery or on the cemetery gates.

(g) The City will not be responsible for acts of vandalism or theft of memorials or personal property.

Sec. 16-23. Funerals

Funeral establishments must schedule funerals to ensure that all attendees vacate the cemetery prior to sundown. On entering and while within the cemetery, funeral processions, participants, and guests shall conduct themselves in accordance with the rules contained in this Chapter.

Sec. 16-24. Interment

(a) Order. A plot/niche owner, or the legal heir(s) of the owner, must sign an order for interment before the City will allow interment.

(b) Notice. The funeral establishment shall provide the City with notice regarding a planned interment. Said notice shall provide the details of the day and time of the proposed interment. Said notice shall be provided to the City at least one (1) business day before the planned interment. A City representative will be present to mark the appropriate plot or niche for interment.

(c) Restricted. All interments in any plot or niche shall be restricted to members of the family and relatives of the owner thereof, unless written permission has been obtained from the City.

(d) Burial Rules. Only up to one (1) casket and three (3) urns may be buried in one plot. This subsection does not affect multiple burials existing as of October 1, 2020.

(e) Niche Rules. No more than two (2) human remains may be interred in one (1) niche in the columbarium.

(f) Fee. A fee shall be assessed for each interment after the first interment in either a plot or a niche. Said fee will be established by the City Commission in the Fee Schedule Ordinance.

Sec. 16-25. Disinterment

(a) Permit. Disinterment shall only be made after a disinterment permit has been issued by the State or upon written permission of the City, if the remains are to be reinterred in the Breckenridge Cemetery or if the remains are located in the columbarium.

(b) Order. A plot/niche owner, or the legal heir(s) of the owner, must sign an order for disinterment before the City will allow disinterment.

(c) Notice. Written notice of any disinterment shall be provided at least one (1) business day before the planned disinterment and shall include the state permit, if required, the order described by subsection (b) above, and provide the details of the day and time of the proposed disinterment. A City representative will be present to mark the appropriate plot or niche for disinterment.

Secs. 16-26—16-29. Reserved

Article V. Appearance of Cemetery

Sec. 16-30. Responsibilities of City

- (a) All lots are marked and put in order by the City.
- (b) The City is responsible for cleaning, mowing, and trimming 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.
- (c) The City shall have the right to fill and level graves and plant grass thereon.
- (d) Twice a year, the City shall conduct a clean-up during which it will remove any items left at the cemetery for longer than thirty (30) days.

Sec. 16-31. Appearance of grave sites

- (a) Boundary and Grade. All boundary markers set by the City must remain undisturbed. The grade of lots, once established, shall not be changed without the consent of the City.
- (b) Vegetation. Picking flowers, wild or cultivated, or injuring trees, plants, shrubs, or other property in the Breckenridge Cemetery is strictly prohibited. The planting of trees, shrubs, and bushes will not be permitted without prior approval of the City Manager.
- (c) Seating. No benches, chairs, or similar items shall be permitted on any plot.
- (d) Perimeter Structures. No fencing, coping, or enclosure of any nature will be allowed upon plots, except for cornerstones which comply with the standards contained in Section 16-32(e).
- (e) Materials. No gravel, stone, cement, or artificial walks are allowed on plots.
- (f) Where more than one person claims an interest in a plot, no visible dividing lines are allowed.

Sec. 16-32. Memorials

- (a) Notice Required. A dealer wishing to install a memorial must provide written notice to the City at least one (1) business day prior to installation. Said notice shall include documentation from the plot owner authorizing the installation of the memorial and provide information regarding the size, description, material, and lettering of the memorial. Before a dealer may install a memorial, it must have the written authorization of the City. Once allowed, all work must be completed as fast as possible, under the supervision of the City, and all materials must be removed when work is completed.
- (b) Monuments. Standing monuments must be made by natural granite and must be between three feet (3') and five feet (5') tall. Standing monuments are allowed only in the upright portion of the cemetery.

(c) Family Monuments. If a family monument is permitted on a plot, only one family monument may be installed, and it must be installed as near to the center as practically possible. If the plot is in the upright section of the cemetery, the family monument must comply with the height requirements in subsection (c), above. If the plot is in the flat section of the cemetery, the family monument must be placed horizontal with the surface of the plot and may be no larger than four feet (4') by two feet (2') by six inches (6").

(d) Individual grave markers. Where permitted, grave markers may be set level with the grave. The markers shall be no larger than two feet (2') by six inches (6") and must be of natural granite, bronze, or marble. No temporary marker of any type will be permitted longer than ninety (90) days.

(e) Cornerstones. Cornerstones must be level with the ground and made of unpolished granite or bronze to replace markers placed by the City. Initials are only allowed on one (1) corner.

(f) Removal. No memorial shall be removed from any plot under claim that it is not paid for, or other pretense, without the written permission of the City.

Sec. 16-33. Decoration of grave sites

(a) Non-Flower Items. No boxes, shells, toys, glassware, trinkets, rosaries, or similar items may be placed loose on any plot. However, in the upright section of the cemetery these items may be permanently attached to the base of an upright monument by the plot owner.

(b) Lights. Solar lights are not permitted.

(c) Flowers. Only one flower arrangement is allowed per plot. Flowers may only be placed in a metal flower receptacle, that is affixed to the memorial or inserted in the ground directly adjacent to the memorial, or may be placed in a basket hanging from a shepherd's hook that is directly adjacent to the memorial. In the upright section of the cemetery, flower saddles may be placed on upright monuments.

(d) Holidays. Flowers, plants, containers, wire racks or similar objects may be placed on a plot during the following time frames. If left past this time frame, they will be removed by the City.

- (1) Easter Sunday: Three (3) days before and three (3) days after.
- (2) Mother's Day: Three (3) days before and three (3) days after.
- (3) Memorial Day: Three (3) days before and three (3) days after.
- (4) Father's Day: Three (3) days before and three (3) days after.
- (5) Fourth of July: Three (3) days before and three (3) days after.
- (6) Veterans Day: Three (3) days before and three (3) days after.
- (7) Thanksgiving Day: Five (5) days before and five (5) days after.

(8) Christmas Day: Five (5) days before and five (5) days after.

(e) Existing Decorations. Any decorations existing on plots as of October 1, 2020 which are in violation of this Chapter shall be allowed to remain as long as the decorations do not pose a threat to the health and safety of visitors and do not interfere with the City's ability to maintain the cemetery.

Sec. 16-34. Surrounding areas

The space and walk around single graves remain the property of the City. No markers, trees, or flowers shall be allowed between the single grave rows.

Sec. 16-35. Decoration of niches

(a) No permanent or semi-permanent decorations are permitted in the columbarium.

(b) Funerals. Following an interment, one flower arrangement or memorial may be left at the site of the niche in which the interment occurred for up to three (3) days. Any flower arrangement or memorial remaining after this time will be removed by the City.

(c) Holidays. Flower arrangements or memorials may be placed near a niche during the following time frames. If left past this time frame, they will be removed by the City.

(1) Easter Sunday: Three (3) days before and three (3) days after.

(2) Mother's Day: Three (3) days before and three (3) days after.

(3) Memorial Day: Three (3) days before and three (3) days after.

(4) Father's Day: Three (3) days before and three (3) days after.

(5) Fourth of July: Three (3) days before and three (3) days after.

(6) Veterans Day: Three (3) days before and three (3) days after.

(7) Thanksgiving Day: Five (5) days before and five (5) days after.

(8) Christmas Day: Five (5) days before and five (5) days after.

II. Repeal. All ordinances or parts of ordinances in conflict herewith shall be and are hereby repealed to the extent of such conflict.

III. Severability. The provisions of this Ordinance are declared to be severable. If any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance, but they shall remain in effect notwithstanding the validity of any part.

IV. ***Effective Date.*** This Ordinance shall take effect upon its adoption by the City Commission and publication as required by the City Charter or the Local Government Code.

The above and foregoing ordinance was duly proposed, read in full, and adopted on the 1st day of September 2020 at a regular meeting of the City Commission.

The above and foregoing ordinance was duly proposed, read in full, and finally adopted on the 6th day of October 2020 at a regular meeting of the City Commission.



Bob Sims, Mayor

ATTEST:



Heather Robertson-Caraway, CCCII, TRMC
Interim City Manager of Administration / City Secretary

