

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF BRYAN, TEXAS, AMENDING CHAPTER 22 “CEMETERIES”, SECTION 22-1 “GENERAL”, SECTION 22-5 “PLANTING AND OTHER DECORATIONS IN CEMETERIES”, SECTION 22-6 “COPINGS, HEDGES, FENCES, BENCHES, ETC.”, SECTION 22-7 “MONUMENTS, HEADSTONES, AND MARKERS”, SECTION 22-8 “MAUSOLEUMS”, AND SECTION 22-11 “PURCHASE OF LOTS” OF THE BRYAN CITY CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE FINDING AND DETERMINING THAT THE MEETINGS AT WHICH THE ORDINANCE IS PASSED ARE OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the City of Bryan (“City”) is responsible for maintaining and overseeing the City’s public cemeteries, and has adopted ordinances governing the care, maintenance, and orderly operation of same; and

WHEREAS, the City’s ordinances are in need of amendment to clarify rules, improve enforcement, and codify the process for memorializing transfers or sales of cemetery spaces; and

WHEREAS, the City’s Cemeteries Advisory Board has recommended several changes to the City’s ordinances and the City Council has determined that it is in the best interests of the citizens of this City to adopt those changes; and

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

1.

That Chapter 22, section 22-1 “General” is amended to read as follows:

**Sec. 22-1. - General.**

The Bryan City Cemetery and Oakwood Cemetery are established as municipal cemeteries for the burial of persons who may die in the city or may be brought to the city for burial subject to the rules established in this chapter, the Code of Ordinances of the City of Bryan, and any applicable state or federal laws. The rules and regulations established by this chapter are necessary for the protection of the rights of all burial space licensees and for the health, safety, and welfare of the public.

2.

That Chapter 22, section 22-5 “Planting and other decorations in cemeteries” is amended to read as follows:

**Sec. 22-5. - Plantings, landscaping, and other decorations in cemeteries.**

(a) The city shall establish the final grade to match the surrounding area after an appropriate amount of time has elapsed from burial to allow for settling.

(b) All plantings shall be approved in writing by the city manager or his or her delegate. These plantings may be removed by the city sexton whenever they become unsightly, diseased, or as necessary to provide access to grave spaces.

(c) No more than one (1) tree or large shrub per grave space shall be allowed.

(d) The placing of potted plants, cut flowers, baskets, floral pieces, funeral designs, decorations, and all other objects of a temporary nature is permitted adjacent to or on a monument only. Any decorations of a temporary nature must be removed within ten (10) calendar days of being placed. This section does not apply to temporary grave markers.

(e) No glass or ceramic items shall be allowed. No hanging baskets, windsocks, or shepherd crooks shall be allowed.

(f) No statues, religious or otherwise, shall be allowed except those which are part of and secured to an approved headstone. Temporary flags shall be permitted if they are less than twelve (12) inches in height, are placed on or adjacent to an approved headstone or monument, and must be removed within ten (10) calendar days of being placed.

(g) The cemetery sexton shall have the right to remove all flowers, potted plants, wreaths, baskets, floral pieces, funeral designs, decorations, and all other objects of a temporary nature when they become an obstruction to maintenance, unsightly, withered, dangerous, or were placed contrary to the provisions of this section.

3.

That Chapter 22, section 22-6 “Copings, hedges, fences, benches, etc.” is amended to read as follows:

**Sec. 22-6. - Copings, hedges, fences, benches, and other permanent decorations in cemeteries.**

(a) No hedges, fences, exposed vaults, walls, or other enclosures shall be permitted in, on, or around any space without written permission of the city manager or his or her delegate. Any such items installed without permission may be removed by the city at the cost and expense of the party responsible for installing such items. Fences must be constructed of metal, be at least thirty-six inches (36”) in height, and have a gate or other means of access for the purpose of maintenance.

(b) Copings and ledgers shall only be permitted with the written approval of the city manager or his or her delegate, and must be set flush to the ground. A ledger is any solid stone, monument, or marker that may be placed in such a way as to cover the grave space.

(c) No benches shall be permitted in cemeteries without the written permission of the city manager or his or her delegate. Benches may only be placed on a space that has been purchased from the city. Benches must be entirely constructed of natural stone or metal and supplied by a monument company or otherwise approved installer.

(d) No flagpoles shall be permitted in the city cemeteries.

(e) Written permission may be granted after the fact for any fences, copings, ledgers, benches, or other permanent markers or decorations installed

- i. prior to September 25, 2007, if they are in good condition and do not inhibit maintenance; or
- ii. after September 25, 2007, but prior to the effective date of this ordinance, if they are in good condition and are otherwise not in violation of city ordinances.

4.

That Chapter 22, section 22-7 “Monuments, headstones and markers” is amended to read as follows:

**Sec. 22-7. - Monuments, headstones, and markers.**

(a) *Monument* shall mean a marker placed on the head line of a burial space or spaces. *Foot marker* shall mean a marker placed on the foot line of a burial space and shall be set flush to the ground.

(b) The back of a monument shall be set on the head line of a burial space and equidistant from the side boundaries, and the monument shall be located on undisturbed ground. No more than one (1) monument shall be permitted per single burial space and shall be set in accordance with the current city permit regulations and restrictions.

(c) Corner markers shall be set flush with the ground.

(d) Any ornaments or vases incorporated into any monument or foot marker design must be permanently affixed to the monument or marker and not extend beyond the edge of the monument or marker. Temporary grave markers are permitted until a permanent monument is installed in accordance with this ordinance, at which point they shall be removed. Lights of any kind, other than those installed and maintained by the city, are not permitted and may be removed by the cemetery sexton.

(e) *Approval required.* No monument, headstone, historical marker, or marker may be set in any municipal cemetery without the prior written approval of the city manager or his or her delegate and issuance of a permit. All permit requests must include appropriate drawings and dimensions for each requested monument, headstone or marker. Any monument, headstone, or marker set in violation of the requirements of this chapter shall be subject to removal by the city. The responsible party may be charged any reasonable storage, clean up and restoration, or other costs incurred by the city as a result of such removal.

5.

That Chapter 22, section 22-8 “Mausoleums” is amended to read as follows:

**Sec. 22-8. - Mausoleums.**

(a) *Mausoleums shall be built of granite, marble, or stone.* The location, size, and design must be approved by the cemetery sexton.

(b) *Approval required.* No mausoleum may be set in any municipal cemetery without the prior written approval of the city manager or his or her delegate and issuance of a permit. All permit requests must include appropriate drawings and dimensions. Any mausoleum erected in violation of the requirements of this chapter shall be subject to removal by the city. The responsible party may be charged any reasonable storage, clean up and restoration, or other costs incurred by the city as a result of such removal.

6.

That Chapter 22, section 22-11 “Purchase of lots” is amended to read as follows:

**Sec. 22-11. - Purchase of spaces.**

(a) *Limitation of number of burials per space.* Persons may purchase a license for a single standard space in a municipal cemetery for the burial of one (1) casket or for the burial of the remains

from up to two (2) cremations. No stacking of caskets shall be allowed. Combinations of casket burials and cremation remains shall not be allowed in a single standard space.

(b) *Prices; service fee schedule.* The price of a license for each space in a municipal cemetery for burial and the fee schedule for services at the municipal cemeteries shall be as provided in a resolution of the city council and such resolution shall be continued in full force and effect as the same may be amended from time to time. The resolution shall be on file in the office of the city secretary.

(c) *Conveyance by deed.* All licenses for spaces in any municipal cemetery shall be conveyed to the purchaser by deed for the purpose of burial and memorialization only. No fee simple interest or any other rights, title or interest, including any oil, gas, mineral, or water interests are conveyed to the licensee. The rights of the licensee therein are subject to such rules and ordinances as may be enacted or amended, from time to time, by the city council.

(d) *Purchase and use of spaces.* Anyone wishing to purchase a license for a space in a municipal cemetery shall make known the space or spaces selected to the cemetery sexton, who will give him or her receipt, after the payment of the purchase money showing the space or spaces purchased, price paid, and the name of licensee (or the name of the person the space will be deeded to if the space is being purchased for someone else). Upon presentation of the receipt to the city secretary, he or she shall execute to licensee, on behalf of the city, a deed for the space signed by the mayor. The deed may contain such reasonable restrictions, reservations from, and exceptions to title consistent with this chapter. A true and correct copy of each deed is to be kept by the city secretary in a record provided for that purpose. The proceeds of spaces sold are to be received, kept, and accounted for as other city funds.

(1) *Unlawful burial.* It shall be unlawful to bury any dead body or the remains from any cremation of a dead body in the municipal cemeteries without a record of the right to be buried.

(2) *Permissible burial.* During his or her lifetime, the record licensee has the exclusive control over each space or spaces with respect to the use of the space for burial (this provision in no way limits the city's authority). After the death of the record licensee, any relative by consanguinity or affinity has a right to be buried on an available space, on a first come first served basis. No documentation of this right is required for any relative within the fourth degree of consanguinity or affinity.

(3) *Exclusive control after death.* Any heir or assignee of the record licensee who desires to exercise exclusive control over a space, with respect to the use of the space, must obtain a new deed in his or her name, as provided in this chapter.

(e) *Resale, transfer, or conveyance.* The sale, transfer, or assignment of any space or spaces in any cemetery owned by the city shall not be binding upon the city until the city issues a deed in the name of the new licensee. A deed will be issued if:

(1) the record licensee makes a specific disposition of the space or spaces in a probated will or other verified writing acceptable to the city attorney; or,

(2) an affidavit of heirship for the previous record licensee is filed with the city on a form acceptable to the city attorney along with any other documentation required by the city attorney to establish a valid claim to the space.

(f) *Record of ownership.* The cemetery sexton shall maintain adequate records showing the names of the licensees of the spaces in all municipal cemeteries sold in such manner as to indicate by space number on the plat the corresponding space number contained in the deed of purchase. A duplicate copy shall be given to the city secretary by the cemetery sexton as may be required by the city secretary.

7.

All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

8.

The Code of the City of Bryan, Texas, as amended, shall remain in full force and effect, save and except as amended by this Ordinance.

9.

Should any section, paragraph, sentence, clause, phrase, or word of this Ordinance be declared unconstitutional or invalid for any purpose by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby and to this end the provisions of this Ordinance are declared to be severable.

10.

It is hereby found and determined that the meetings at which this Ordinance was passed were open to the public, as required by Section 551.001 et seq., Texas Government Code, and that advance public notice of time, place, and purpose of said meetings was given.

11.

It is the intention of the City Council that this Ordinance shall become a part of the Code of the City of Bryan, Texas, and it may be renumbered and codified therein accordingly.

12.

This Ordinance will be effective from and after its passage.

PRESENTED AND GIVEN first reading the 13th day of June, 2017, at a regular meeting of the City Council of the City of Bryan, Texas; and given a second reading, passed and approved on the 27th day of June, 2017, by a vote of \_\_\_\_\_ yeses and \_\_\_\_\_ noes at a special meeting of the City Council of the City of Bryan, Texas.

CITY OF BRYAN

ATTEST:

\_\_\_\_\_  
Andrew Nelson, Mayor

\_\_\_\_\_  
Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Janis K. Hampton, City Attorney